TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1916

No. [redacted] 138

THE UNITED STATES, APPELLANT,

vs.

AMERICAN-ASIATIC STEAMSHIP COMPANY ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

RECORD: VOLUME 3.

TESTIMONY OF WITNESS FOR DEFENDANTS.
DEFENDANTS' EXHIBITS.

FILED MAY 26, 1916.

United States District Court

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA,

Petitioner,

against

AMERICAN-ASIATIC STEAMSHIP CO., and others,

Defendants.

RECORD—VOLUME III.

Testimony of Witness for Defendants.
Defendants' Exhibits.

UNITED STATES OF AMERICA
vs.
AMERICAN-ASIATIC STEAMSHIP CO., *et al.*

RECORD, VOLUME III.

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Before—GILBERT H. MONTAGUE, Esq., 2561

Special Examiner.

New York, July 9, 1914.

Met Pursuant to Notice.

APPEARANCES:

ERNEST E. BALDWIN and STANLEY D. MONTGOMERY, for the Petitioner.

BURLINGHAM, MONTGOMERY & BEECHER, Solicitors for defendants Howard Houlder & Partners, Ltd., and others (Charles C. Burlingham and Charles Burlingham, of Counsel). 2562

CONVERS & KIRLIN, Solicitors for defendants Bucknall Steamship Lines, Ltd., and others (J. Parker Kirlin and M. W. Maclay, Jr., of counsel).

CALEB TUCKER BRIGGS, a witness called on behalf of the defendants, being duly sworn, testified as follows:

DIRECT EXAMINATION by Mr. C. C. Burlingham:

Q. You reside where? A. New York City.

Q. And what is your business? A. Exporting and importing. 2563

Q. With what house are you connected? A. I am Vice President of the Pacific Commercial Company.

Q. A corporation formed when? A. It was organized in the latter part of 1911, under the laws of the Philippine Islands; it is a Philippine corporation.

Q. And have you been with it since its incorporation? A. Yes.

Q. Does it succeed any firm, or is it a new enterprise? A. It succeeds the firm of Castle Brothers-Wolf & Sons.

Q. Were you connected with that house? A. No. 2564

Q. What was their business? A. The same business, exporting and importing.

Q. Exporting and importing, principally from the Philippines? A. Principally from the Philippines, yes, sir.

Q. Or exclusively? A. Well, not exclusively, but their head office is and has been in the Philippines, and that is where their business is chiefly done. They import from this country and from Japan, Australia and from the Continent, and export to those countries.

2565 Q. Where is your main office? A. Manila.

Q. And your New York office is where? A. 50 Broad Street.

Q. What are your duties as Vice President? A. I have charge of the New York office.

Q. Are you familiar with the conditions of trade between the United States and the Philippine Islands, and also with Far Eastern ports? A. Chiefly the Philippine Islands.

Q. Before you joined in the formation of this concern, what was your business? A. I was manager of the Oriental Department of Henry W. Peabody & Company.

2566 Q. A Boston and New York house? A. Boston and New York house.

Q. And were you in Boston or New York? A. I was originally in Boston, and later in New York.

Q. They are merchants? A. Yes, commission merchants.

Q. Commission merchants, doing a very large business with the East? A. Yes, they have business in all parts of the world.

Q. All parts of the world? A. I was in charge of the department handling the Far Eastern business, China, Japan and the Philippines.

2567 Q. But their business is not confined to the Far East? A. Oh, no.

Q. They ship to all parts of the world? A. They ship to Australia, South Africa—all over the world, practically.

Q. How long were you connected with them? A. Peabody & Company?

Q. Yes? A. About twenty-seven years.

Q. And part of the time in New York and part in Boston? A. Yes.

Q. What proportion? A. Let me see; I have been in New
2568 York fifteen years.

Q. With the trade of what particular ports were you connected when with Peabody & Company? A. In New York, since I came to New York, I was in connection with the Japan and China ports and the Philippines; Yokohama, Kobe, Shanghai, Hong Kong and Manila chiefly.

Q. And did you have to do with imports as well as exports? A. No, with Peabody my business was wholly with the exports.

Q. With your present concern it is both? A. I have supervision of all the work of the New York office.

Q. During your experience of nearly thirty years I see it is, isn't it? A. Yes. 2569

Q. (Continuing) Have you known periods of competition between the various steamship lines, and other periods when conference agreements have been in force? A. Yes.

Q. Confining yourself to the trade with the Far East from the United States, have you had such experience? A. Yes.

Q. What lines do you ship by; what lines does your present concern ship by? A. The bulk of our freight goes by the Suez lines; some of it goes overland by San Francisco and Puget Sound.

Q. How much? A. Oh, it is pretty hard to estimate; I should say three-fourths goes Suez. 2570

Q. And when you were with Peabody & Company, how did you ship? A. The same way.

Q. Do you ship at all by Europe and trans-ship there? A. No.

Q. Do you know whether it is done by any merchants? A. Not to my knowledge.

Q. Now, speaking from your experience of periods of competition, and periods when conference agreements were in existence, what do you say are the comparative advantages or disadvantages of the two systems? 2571

MR. MONTGOMERY: Objected to as incompetent, irrelevant and immaterial, calling for the conclusion of the witness, and not specifying the time nor the periods between which the comparison is sought to be made, and no knowledge, obviously, can be in this witness as to what agreements may have been in force at some particular time. I object to it on the further ground that it does not appear to be confined even to this traffic—any conference or steamship.

THE WITNESS: Well, in my own experience I have found, since the conference lines have been working together, greater satisfaction in handling the business; I think I may say a greater security in connection with forward shipments. 2572

Q. What do you mean by forward shipments? A. Why, in our business we have a great many contracts calling for deliveries over certain periods of time.

Q. You mean contracts with purchasers? A. With purchasers. For instance, we have Government contracts, com-

2573 missary contracts and contracts with the Civil Government, calling for deliveries of articles stretching over a period. As it is now, we can figure pretty accurately not only what our landed cost is going to be over that period, but the regularity of our deliveries—the regularity of shipments and a pretty fair regularity of delivery.

Q. By regularity of shipments do you mean regularity of sailing? A. Yes.

Q. And you say a pretty fair regularity of delivery? A. I mean by that there is a certain schedule now which is very closely maintained as to sailings and those steamers go to
2574 ports of which we are advised, practically, before they sail, and we know that under certain normal conditions the steamer will arrive at Manila, for instance, within a pretty close range of time, so that we can figure that by shipping goods at certain intervals from New York we can effect certain deliveries in Manila. There is a stability under the present arrangement which makes business a little safer for us.

Q. What about rates? A. Well, I wouldn't want to go back to the days when a rate was not good, until I got back to the office.

2575 MR. MONTGOMERY: I ask to have that stricken out as not responsive to the question and as a conclusion of the witness, and incompetent, irrelevant and immaterial, because the rates themselves and the time the rates were in force ought to be in this record, if any point is sought to be made about them.

Q. Compare, if you will, the difference under unrestricted competition and under conference agreements, as it affects rates, their stability and continuity?

2576 MR. MONTGOMERY: That is objected to as incompetent, irrelevant and immaterial, and calling for a conclusion of the witness about an indefinite or imaginary period of competition.

THE WITNESS: Under the unrestricted competition, there was no stability to rates; there were no rates at times.

Q. What do you mean by that? A. I mean it changed, it all depended; if you had a block of freight, working on, you didn't know what the rate was going to be, it was a matter

of negotiation, and rates were fluctuating, and if I had a 2577
certain amount of freight I was figuring on and I got a rate, and somebody had a block similar that they were figuring on, perhaps a little larger, why they had a rate; their rate might be considerably lower than mine in an afternoon, or in an hour.

Q. Now, how is it, under the conference system? A. The rates now are fixed and established, and we know; we don't have to go, every time we have a little lot of freight to book, we don't have to go around to the different steamship lines to see what the rate is going to be.

Q. But under the competitive system, especially if it is un- 2578
restricted and cut-throat, there is an advantage, is there not, to the immediate shipper in getting a low rate? A. I don't feel it in my business; I would much rather see the rates established, and know what I can figure on to-day and to-morrow and next week and two or three months from now.

Q. How do you think it affects your relations with your friends in the East, to whom you are shipping? A. As regards the laid down cost?

Q. Yes. A. Well, I think under the unrestricted competition the man at the other end was at a disadvantage, be- 2579
cause he might have a shipment come through at a certain rate of freight—

MR. MONTGOMERY: I object to this as calling for a conclusion of the witness, obviously hearsay, incompetent, irrelevant and immaterial, and ask to have the answer stricken out; and I object for the further reason that the answer shows that it is a mere opinion and there is no knowledge; he says, "I think."

THE WITNESS: (Continuing) And a competitor might have a shipment on the same steamer at a materially lower rate of freight. I may say that I know 2580
that to be the fact, because I have been on both ends of the line; I have been at this end and at the Philippine end.

Q. Have you been in the Philippines? A. Yes.

Q. When were you there? A. Three times.

Q. What years? A. I was there first in 1904, 1907 and 1910.

Q. Have you been in other parts of the East? A. Yes.

Q. China? A. China and Japan.

2581 Q. And Japan; the principal ports? A. I have been to all the seaports of China and Japan.

Q. During those trips? A. Yes.

Q. Under the conference system are you able to ship by various lines in the conference? A. Yes.

Q. On your forward contract?

MR. MONTGOMERY: That is objected to as incompetent, immaterial and irrelevant, the contracts themselves would be the best evidence.

THE WITNESS: Under the present arrangement I
2582 can and do make bookings for some periods ahead, at specific intervals of shipment, with a certainty that there will be a bottom provided to take those goods at the time I want them to go forward.

Q. Under the conference system is there a distribution of ports among various steamers, so that some steamers go to certain ports in the East and others go to certain other ports? A. I cannot answer that, excepting to say that the schedules of certain steamers call for certain specified ports.

Q. Is that an advantage to merchants? A. Yes.

Q. In what respect? A. Well, on a Manila cargo, for
2583 instance, it is an advantage to us to have Manila the first port of call in the Far East, rather than have Hong Kong, for instance, or Shanghai, and then Manila.

MR. MONTGOMERY: This is all objected to as incompetent, irrelevant and immaterial, for the reason, in addition to my other objections, that it obviously cannot be attributable to the conference alone that these conditions that are claimed to be favorable exist.

2584 Q. You are familiar, I suppose, with rates to the Philippines from this country, and have been for a good many years? A. Yes.

Q. And also rates to the East, too? A. Yes.

Q. Have you any familiarity also with rates from European ports to the Far East, the Philippines? Have you kept acquainted with those? A. Not specifically, no.

Q. Do you from time to time ascertain what they are? A. Occasionally, on certain commodities.

Q. Do you have any competitors in Europe in the business in which you are engaged? A. No, not to any extent.

Q. What are the bulk of your shipments? A. Provisions, 2585
steel, hardware, plumbing goods, canned goods of all sorts.

Q. You don't send bulk goods, then? A. No. Well, we ship a good deal of structural steel.

Q. Structural steel? A. Structural steel, nails, sheets.

Q. I was going to ask you—perhaps you are unable to tell me—how the rates from this country compared with those from, say, England or Germany to the Philippines?

MR. MONTGOMERY: Objected to.

THE WITNESS: I have no specific knowledge on those points.

2586

Q. Now, take a period, say, from 1905 on until the present day, what do you say as to the rates of these conference lines to the Far East, as to their reasonableness or unreasonableness?

MR. MONTGOMERY: That is objected to as incompetent, irrelevant and immaterial, calling for a conclusion of the witness, and obviously beyond the realm of his knowledge.

THE WITNESS: In a general way, I would say that the main feature of the present rates, to our mind, 2587
is the stability of them and the regularity of opportunities of shipping.

Q. Well, are they or have they been unreasonable, in your opinion?

MR. MONTGOMERY: That is objected to, the same objection.

THE WITNESS: Not to my mind.

Q. What other ports besides Manila do the conference lines go to, in the Philippines? A. Iloilo and Cebu.

Q. Are those comparatively small ports? A. Those are 2588
small outlying ports in the southern islands. Cebu is the chief port for the hemp district, and Iloilo is the chief port for sugar.

Q. Bringing it back? A. Well, at intervals there are steamers that make those ports, and we ship when we have cargo for those ports we arrange to ship it at those times.

Q. And do the Manila steamers stop there, at those other ports, the steamers that go from here to Manila? A. No.

2589 Q. You have a direct service, practically, to Manila, do you? A. We have a direct service from New York to Manila, and at times certain steamers make Iloilo or Cebu, sometimes both, a port of call.

Q. Are those advertised? A. Oh, yes.

Q. And do you know them before hand? A. We know; we usually have sufficient knowledge ahead to make our arrangements to ship any cargo destined for those ports direct, rather than trans-ship from Manila.

Q. Do your statements with regard to regularity of sailing and comparative regularity of delivery apply to those
2590 ports as well as to Manila? A. Well, those are not fixed intervals; they are rather occasional, but we usually know a month or six weeks or two months ahead that there is a steamer planned for those outports, and we arrange accordingly.

Q. During your experience with the Philippines, have those been developed, those ports? A. Oh, yes.

Q. The trade with them, to any great extent? A. It is only for the last few years that steamers from here have made them as ports of call at all; formerly everything was trans-shipped from Manila.

2591 Q. That, of course, was a disadvantage to merchants, wasn't it? A. Oh, yes.

Q. It involved expense and delay, I suppose? A. Yes, both.

Q. And under the conference system? A. We can land goods in Iloilo, for instance, cheaper by a steamer going to Iloilo as a port of call than if we have to trans-ship from Manila.

Q. Undoubtedly; and has that been accomplished under the conference system arrangement? A. Yes, that is only
2592 within the last few years that has been the case.

CROSS EXAMINATION by Mr. Montgomery:

Q. Who are the agents at Manila of Shewan Tomes & Company? A. Warner, Barnes & Company.

Q. How long have they been the agents? A. I couldn't say definitely; I should say six or seven years, about.

Q. Six or seven years? A. I couldn't say definitely.

Q. I notice by reference to Petitioner's Exhibit 8, in this case, page 492 of Volume 2 of the record of exhibits, this exhibit having been produced by Mr. Dodwell at page 51,

that at the time this agreement Exhibit 8 was made, being the Westward Agreement of the conference lines, that a concern known as Castle Brothers-Wolf & Sons were the agents of Shewan Tomes at Manila? A. Possibly. 2598

MR. BURLINGHAM: You had better give the date, Mr. Montgomery.

MR. MONTGOMERY: The date is the 13th of April, 1905.

Q. You don't know when they ceased to be the agents? A. No, I was not connected with Castle Brothers-Wolf & Sons until the end of 1911; all my trips to the Philippines 2594 were in the interest of Peabody & Company.

Q. Well, when you went out there in the interest of Peabody & Company, did you find Castle Brothers-Wolf & Sons acting as agents for Shewan Tomes & Company in 1904? A. I couldn't say.

Q. In 1907? A. It would be simply a matter of recollection.

Q. Yes, exactly. A. But I don't recall that they were at that time, or were not.

Q. In 1907? A. I was there in 1907, and at that time I am quite sure that Warner, Barnes were agents. 2595

Q. Well, does your company now act as agents for any steamship line? A. Agents for the Pacific Mail Steamship Company.

Q. At what ports? A. The Philippine ports, Manila; Manila is the only port of call they make.

Q. And what is the service that you are agents for, Manila to what ports? A. Why, we are agents of the company at Manila, for the passenger service, and handling their inward and outward freight.

Q. To what ports? A. To Manila from San Francisco, or to China or Japan ports, if there is any cargo going that 2596 way.

Q. All China and Japan ports? A. In and out cargo from Manila, and passengers.

Q. How long have you been agents for the Pacific Mail Steamship Company? A. I think Castle Brothers and the company have been agents for about fifteen years.

Q. Yes, and this Pacific Commercial Company? A. Yes.

Q. Have been the agents ever since you succeeded Castle Brothers & Wolf, have they? A. Yes.

2597 Q. State whether or not the Pacific Mail Steamship Company is a member of any conference of steamship lines? A. I don't know, and I would not know, because all relations with the Pacific Mail Steamship Company are between the San Francisco office and the Manila office.

Q. You ship some, you say, from Manila via that line?

MR. BURLINGHAM: To Manila, do you mean, or from?

Q. From Manila, you import to this country via that line, don't you? A. Yes.

2598 Q. And do you also import from China and Japan via that line? A. Yes.

Q. Do you know whether or not on the shipments that you import, deferred rebates are paid? A. No, I don't know.

Q. You don't know about that? A. All that we buy from Japan, for instance, are bought on a c. i. f. basis; in fact, all our shipments from the Philippines are bought on a c. i. f. basis.

Q. And when you have been out in China and Japan, you never have inquired to find out whether deferred re-
2599 bates were actually paid by the Pacific Mail Steamship Line? A. No.

Q. You never heard that they were? A. I never heard that they were.

Q. Do you know whether or not the rates from Manila to San Francisco, for example, are the same via the Pacific Mail as they are by competing lines? A. To the Pacific Coast?

Q. Yes. A. I think they are all the same.

Q. So that you never have discussed in Manila, with any one, the question of whether this line co-operates with
2600 the other lines in that service? A. No, because when I was in Manila I was interested only in the import business, from here to the Philippine Islands; I never had any handling of shipments from the Philippines to this country. I occasionally made some shipments to Australia, once in a while, but my business was wholly on the export end of Peabody's business.

Q. Is that the only line that your company is a steamship agent for in any place? A. Yes.

Q. And that is only at Manila? A. That is the only port of call; we are agents, I suppose, for the Philippine Islands of the Pacific Mail Steamship Company, but Manila is the only port that they make. 2601

Q. On your shipments from the Philippines, do you know whether or not rebates are paid on those shipments? A. Not to my knowledge.

Q. Do you know whether or not rebates are paid on the shipments from the Philippine Islands via the Suez lines? A. I have never handled any outward shipments from the Philippines to this country at all, and I have no knowledge as to what the rates are or how the freight is handled there, because I have never been in Manila since I was connected with this company; so I have no knowledge whatever as to even what the rates are, or the basis. So far as I know, there is no rebate system, there is nothing that comes through my records. 2602

Q. You are familiar with the fact, are you not, that in 1905 or 1906, the Suez lines and the trans-continental railroads and the Pacific lines all combined in an arrangement to make rates to be charged each way, on a very large number of articles; are you not? A. No.

Q. You are not familiar with that fact? A. I never knew that. 2603

Q. What articles do you mainly import from Manila via the Pacific line? A. To the Pacific Coast?

Q. Yes. A. Some sugar, some hemp, some Philippine products, hats, nuts.

Q. And what controls the question of whether you ship via the Pacific lines or via the Suez lines? A. The locality of distribution.

Q. That is, the point of ultimate distribution of the goods? A. Yes. Very little comes across the country to this part, that is shipped to the Pacific Coast. Hats are about the only article we ship from the Philippines that come across the continent to New York. 2604

Q. Because of their greater value, and speed being required? A. Yes, speed; it is usually to get to the market; then, they are light and bulky.

Q. I take it, then, in addition to your imports of sugar and hemp via the Pacific lines, you also import them via the Suez lines, where they are for distribution in this part

2605 of the country? A. Yes, most of the hemp in this part of the country comes in through the Suez lines.

Q. Through the Suez lines; it, of course, is much more expensive to bring in hemp, for instance, to New York, via the Pacific route than by Suez, owing to the long rail haul? A. Oh, yes, I don't think it would be practicable to bring it that way.

Q. Well, that would be true of all articles, would it not, except articles of very great value? A. Why, any bulky commodity, I don't think it would be feasible at all to bring it to a Pacific port, and then the rail haul across the coun-

2606 try.

Q. You would not say, then, that the Pacific lines were really competitors of the Suez lines on the bulk of the Suez business, would you? A. I should not so consider them.

Q. Of course, it would be a possible way, but a very unusual and expensive one, to ship by the expensive rail haul, is that right? A. Any cargo, unless rather valuable in character and to catch a certain market, I should think, would naturally come the other way, through the Canal.

Q. Yes; did you ever operate steamships at all, or are you familiar in any way with the cost of operation, Mr.

2607 Briggs? A. No.

Q. I believe you said you imported about three-fourths of your importations via Suez? A. I should say so, exportations from here.

Q. That is, exportations from here? A. Yes.

Q. And what are the one-fourth remaining, what class of goods are those that go the other way? A. Certain machinery going from the Chicago district, which is bulky, will go through on our weight rate cheaper to the Philippines than to bring it to New York and ship it via Suez.

Q. What class of machinery is that? A. Agriculturals.

2608

Q. Agricultural machinery? A. Chiefly; bulky stuff that measures away up, and doesn't weigh as much in comparison with its measurement.

Q. But nothing originating around here? A. Oh, no, it is practically what they call the Chicago district that takes a certain rate through to Manila; those are all weight rates, so much per hundred pounds through to Manila. Anything east of there, it is a Suez proposition; a matter of figuring in almost every case, it is a comparison to see which is the cheaper.

Q. And what are the other articles besides agricultural implements? A. That we ship? 2609

Q. By Suez? A. We ship all sorts of canned goods and provisions, hardware.

Q. And where do those goods originate? A. Well, the canned goods are usually in this section of the country, from Maine to Maryland.

Q. Do you ship those via the Pacific? A. Oh, no; they nearly all go Suez.

Q. Well, you didn't get my question; I said in addition to the agricultural machinery, what else do you ship via Pacific? A. Oh! Well, at certain times we ship engines 2610 and boilers.

Q. Where from? A. From the Chicago district, and Ohio, Illinois; we ship a good deal of machinery from around Michigan. In every case it is a case of figuring, as I say, which is the cheaper route.

Q. You don't ship anything that originates east of Michigan, do you, via the Pacific route? A. Very rarely; unless it is very bulky, unless the machinery is out of all proportion to the weight, and then as a matter of figuring it is cheaper.

Q. That is because the railroad rates are by weight? A. 2611 They are all by weight.

Q. And the steamship rates are by weight or measurement, at the ship's option? A. Yes.

Q. And it might happen, sometimes, that it would be cheaper on bulky articles? A. Oh, yes, it is a matter of calculation in nearly every instance.

Q. You say that trans-shipment via Europe is not done at all? A. I have never done it.

Q. Never? A. I don't know whether other people do it or not, but not to my knowledge it is done.

Q. You don't know of any one else that does? A. No. 2612

Q. That would not appeal to you as being a practical thing, would it? A. No, I shouldn't think so.

Q. It would involve a trans-shipment, of course? A. It involves the rehandling of the cargo, which we all avoid if we can.

Q. That same thing, of course, would be true, shipping via San Francisco, wouldn't it, from New York? A. Yes, you have got an extra handling there.

2613 Q. So that that you would not regard as a competitive route? A. No.

Q. You are not furnished with a copy of the tariff of the conference lines, are you, Mr. Briggs? A. You mean their schedule of rates?

Q. Yes. A. Why, no, I don't think we have any regular tariff furnished us; we have our rate records of what they quote us on the different lines.

Q. But that would be when you went to them— A. You mean a published tariff?

Q. Yes. A. No, they don't issue published tariffs.

2614 Q. So that you have to always call up and find out what a rate is? A. No, we have their rates on certain classifications of commodities, which they have quoted us and which we have on record; for instance, we know the rate on certain things is a certain rate, and other articles take a different rate.

Q. Well, the fact of it is— A. (Interrupting.) I mean for ordinary purposes of shipping.

Q, That is, after you have made an inquiry and are told that that is the rate, you know that is the rate until it is changed? A. Yes.

2615 Q. But suppose it should be changed, how would you get notice? A. Well, we would be advised of any change in the rate.

Q. On any article? A. I think we have always been advised of any proposed change in rate.

Q. Of any proposed change; well, you don't know, of course, whether all the small shippers are similarly advised? A. I don't know about that; so far as I know the rates are fixed, and we go ahead on that basis.

Q. Who is it that advises you of the changes in rates, what individual? A. I get most of my information from

2616 a broker whom I employ.

Q. You don't get it from the lines, then, direct? A. Not directly.

Q. Who is your broker? A. A man named Rodeman.

Q. You don't know how he gets the information; he has to go to the steamships for it, they don't come to him, do they? You don't know about that, do you? A. No, I don't grasp your question.

Q. I say, you don't understand, do you, that it is the business of somebody in the conference lines to call up

shippers or brokers and advise them every time they change the rate; it would only be upon inquiry by this broker that you would know personally? A. I think he is advised of any changes, and he advises his clientele. 2617

Q. Yes, but you don't know about that at all? A. No, I don't know about it.

Q. You don't know how he gets the information? A. I don't know how he gets the information. Of course, I go right direct, if I have any occasion to do it. I mean, I don't work exclusively through him; if I want to treat with any of the lines, I go right to them and make my own arrangements. 2618

Q. Then you don't ship all your goods through him? A. He doesn't do any of my shipping, I do all my own shipping. He simply—I wouldn't want to call him an errand boy, but it is more on that line. But he does the negotiating work of making the bookings for me and looking after that; but I do all the work of shipping, and bills of lading, and everything else is done in my office.

Q. How is he paid, by a commission from the lines? A. He gets a regular brokerage from the lines with whom he places the cargo. 2619

Q. And that he keeps? A. Yes.

Q. All of it? A. All of it.

Q. He doesn't divide at all any of that brokerage? A. No.

Q. Are you sure about that? A. Absolutely; I don't even know what it is.

Q. Well, there are changes quite frequently in the rates in the Far Eastern business, aren't there, Mr. Briggs? A. No, not nowadays, not frequently. I mean, rates are pretty regularly established. We know that the rate on certain commodities is $10.50 or $10, and for ordinary shipments we go right ahead without making any booking; we simply book when a steamer is coming on, we book the approximate amount of freight we expect to get on her, so many tons, 50 or 75 or 100, or whatever the quantity may be. We make a blanket booking. 2620

Q. That is to say, the general rate on cargo to Manila is $10.50? A. Yes.

Q. And how long has that been so? A. Oh, I should say two or three years.

2621 Q. What was it before that? A. Well, I couldn't say right off hand; it has been higher and it has been lower.

Q. When was it higher, if you know? A. I couldn't definitely state.

Q. How much higher? A. I think it has been as high as $12.

Q. And you don't recall when that was? A. Oh, I should say five or six or seven years ago.

Q. Six or seven years ago; do you know what the reason was for their being so high at that time? A. No.

Q. How much lower have they been? A. I don't remem-
2622 ber there being any set rate lower than $9.

Q. And when was that? A. That was about ten years ago.

Q. About ten years ago? A. About ten years ago; I can't give a specific reply as to these times.

Q. I understand. A. It is only my general recollection.

Q. I don't want to crowd you for too definite an answer. A. I would have to refer to records for that.

Q. Do you keep at all advised of charter rates? A. No.

Q. You don't know anything about that? A. No, we are not charterers.

2623 Q. Do you know in a general way whether the rates of the steamship lines in the conference are based on the charter rates at all? A. I assume that it is; that is the general rule with all shipping companies. While I have never had anything to do with it definitely, when I was with Peabody's I knew they were charterers a good deal.

Q. Then would you say that if the rate of $10.50 has been in force for two or three years by the conference lines, that probably that is because the charter market has been about stationary during that time? A. I should think that it
2624 probably had not ranged any great amount, so that the rates were fairly level; I don't know, I don't suppose there is a fixed parity between the charter rate and the cargo rate.

Q. But you think they keep pretty near together? A. I should think that the charter rate would to a certain extent regulate the rates.

Q. Well, that in itself would involve a certain lack of stability in the rates, wouldn't it? A. Not unless there was some great change. I mean, you take a rate of $10.50, for instance, as a fixed rate. I don't suppose there is an absolute parity between that rate and the charter rate. It

may be more and it may be less. Sometimes that may represent more or less profit to the shipping line. But that is only conjecture on my part, I never had anything to do with that. 2625

Q. You don't even know how many of their boats are chartered boats? A. No, I don't even know that.

Q. Do you get the same rate regardless of the quantity that you ship? A. Yes.

Q. Do you know whether that is true of all shippers? A. I don't know anything about other shippers; I mean, there are certain fixed rates which we pay right along.

Q. That is, you pay $10.50 on all your shipments to Manila, for instance? A. Yes. 2626

Q. On everything? A. No, not everything, because it depends upon the commodity; we pay as low as $6.50 on some commodities.

Q. Well, do your competitors pay $6.50 on those commodities? A. That I cannot tell you; so far as I know they do.

Q. You don't know that they are paying anything more than that? A. No. I might say there is one competitor paying less.

Q. Who is that? A. That is the Government.

Q. The Government; on what kind of material? A. All their shipments. 2627

Q. And how is that done? A. I don't know.

Q. Well, how do you know they are paying less? A. Because that is a matter of common knowledge, for a number of years.

Q. That is, under a contract with the lines? A. Yes, under contracts with the lines. The Government is the only one I know that is getting lower than schedule rates.

Q. You said that under unrestricted competition, sometimes the larger shipment might be carried at a lower rate? A. Yes. 2628

Q. On the same steamer? A. Yes.

Q. Well, isn't it customary to make concessions based on the quantity of shipments by a given steamer? A. No, I don't think so, now. In those days, I have had two shipments on the same steamer at different rates of freight, booked on different days.

Q. When was that? A. That was in 1902 and 1903, somewhere along there.

2629 Q. And you think now that a shipper of a small quantity gets the same rate that the shipper of a large quantity by the same steamer gets? A. So far as I know.

Q. And you never get quotations on quantities? A. You mean special quotations?

Q. Yes. A. No, I don't think we do. We used to; overland, sometimes, we would have some special rates, when there was more competition, but practically all our trade that goes out now, so far as I know, we just go right along at the regular tariff rate.

Q. You would not say, would you, that you never had
2630 asked for rates based on a quantity basis from the conference lines? A. No, I wouldn't say that; I think there are times when I have had certain classes of cargo which a steamer wanted. Oftentimes if a steamer is getting toward the end and somebody can offer them a good block of measurement cargo, they might be willing to make some concession to have you hurry up and put it on that steamer.

Q. And they have done that? A. I think they have, in times past.

Q. And whether they do it or not would not depend on whether you had some competitor who was shipping on that
2631 boat at a higher rate, would it? A. It is simply a case, if they need the freight, I suppose if you have got the freight there is a psychological condition there.

Q. Yes, but if another shipper had shipped at the tariff rate on that same steamer, he would be in the same situation that you were speaking of as being undesirable under the competitive condition, wouldn't he? A. Yes.

Q. So that the conference doesn't do away with that condition, after all, does it, entirely? A. Oh, yes, it does; well, not entirely, so far as I know, but it practically does. I
2632 mean, if I have got a block of freight, for instance, and they need the room, if a steamship is closing, why there is a chance—I don't say you always get it, but there is a chance there for a little dickering.

Q. And you do that sometimes? A. I always dicker when I can.

Q. And you get the best rate you can? A. I always do.

Q. Yes, and you don't feel that the rates are so fixed and stable, but that a little negotiating is a very good thing still, do you? A. I think we will always have a chance to do some little negotiating on any proposition.

Q. Well, how often in the course of a year do you get a concession from the lines, when they need your freight? A. Very seldom. 2633

Q. Well, how recently do you recall a negotiation? A. I don't remember the last year any specific instance, excepting one.

Q. When was that? A. That was about a year ago.

Q. About a year ago now? A. I had a lot of steel moving to an outport, and I got—

Q. What port was that? A. Iloilo.

Q. Iloilo; go ahead, I didn't mean to interrupt you. A. I got a slight concession on account of the quantity and the desirability of the cargo. 2634

Q. That is, from the conference lines? A. Yes.

Q. You don't know whether any competitor was shipping on that same steamer? A. No, it was a complete outfit for a mill; it would not be a competitive cargo, because nobody else had anything like that.

Q. Well, you do get that on competitive cargo also? A. Not on what we call straightaway cargo.

Q. What do you mean by that? A. I mean, like canned corn or canned vegetables, anything of that sort, that is regular cargo, there is no opportunity to dicker on that; but if I have bulk, something specific, some sale of a lot of bulk cargo on some specific transaction, why there is a chance sometimes to get a slight concession. On our regular case goods, there is nothing in that. 2635

Q. You don't ship case oil, do you? A. No.

Q. Well, you would not say that none of the cargo upon which you get a concession was competitive cargo? A. I should say as a rule it is not competitive cargo.

Q. As a rule, yes. A. As a rule. I mean, some specific proposition like the one I have cited, on which on account of its bulk and desirability there is a chance to do something. 2636

Q. What other articles besides steel have you obtained concessions on, or do you take up with the steamship lines about concessions on? A. I don't recall anything besides steel parts; it is steel mostly.

Q. And that is after the goods are sold, I suppose? You have sold the goods? How do you sell the goods there in Manila or in the Philippines? A. On a c. i. f. basis. No,

6559

2687 the c. i. f. basis is based upon the rate of freight and the cost of the goods.

Q. That is, the purchaser pays the cost, the insurance and freight? A. The c. i. f. price includes the cost of the goods, the cost of the freight and the cost of the insurance.

Q. Yes. A. And on the part of the commission merchant, the cost of the commission.

Q. Well, then, who gets the benefit of this reduction that you get; take that one instance? A. Why, the buyer, if it is a competitive proposition, if we are bidding, as we were in that particular case, against a competitor; it was the
2688 laid down cost of the material, plus overhead and profit, which enabled us to get the business.

Q. I don't know as I just understand that; when you negotiated for this price, had you actually sold the goods? A. No.

Q. You were getting the quotations? A. Getting the quotation.

Q. You say there is no advantage to the shipper in low rates of freight? A. No, I didn't say that.

Q. In the lower rates that are obtained under competition? A. I don't think so. It is the laid down cost that counts,
2689 after all. The point I made was not that I objected to the low rates at all, it was the instability.

Q. And stability, you think, is more important than low rates? A. I do.

Q. And to everybody, or to the merchant? A. I think it makes safer business on this end.

Q. How about the consumer? A. Well, you have got the relative landed cost for certain lines that if we cannot lay down there on a competitive basis, why Europe will get the business.

2640 Q. I guess you didn't understand my question. I mean, how would the low rates of freight affect the consumer, the price to the consumer? Under competitive times, when rates were lower, wouldn't the consumer get some benefit of that? A. The ultimate consumer, or do you mean the dealer?

Q. No, the ultimate consumer? A. I don't think that is a matter of cost or freight rates, separately, it is the competition. For instance, if I could lay nails down in Shanghai cheaper than some English or German house in Shanghai, I got the business; if I didn't, why they got the busi-

ness. Where the consumer came in I don't know; the consumers don't get much out of it. 2641

Q. But the competition is such that you quote the lowest price you can, don't you? A. Why, naturally, you have got to, it is competition.

Q. Then the purchaser gets the benefit of that lower rate, doesn't he? A. Why, that is a safe assumption.

Q. And that enables him at least to sell to his purchaser at a lower rate, if he cares to, doesn't it? A. If he cares to.

Q. And if competition compels him to? A. Well, I think you are getting into an argument now on competition relative to prices. 2642

Q. Well, we have been speculating a little, Mr. Briggs, and I thought maybe you— A. No, I think that is maybe a little too deep for me; I am not a political economist.

Q. You ship International Harvester products, do you? A. No.

Q. You ship in competition with them? A. Yes. No, I don't think any of their machinery goes into the Philippines.

Q. Well, you ship to other ports, don't you? A. Not outside of the Philippines, nothing of that character.

Q. You ship in Australia, for instance, don't you? 2643

MR. BURLINGHAM: You say, "Don't you"; he used to, but he doesn't now.

Q. You don't any more? A. Not now.

Q. When you were with Peabody & Company, you used to ship there? A. Yes.

Q. Well, did you ship harvesting machinery out there?

MR. BURLINGHAM: To which place?

Q. To Australia, for instance? A. To Australia?

Q. Yes. A. Well, I couldn't say; it would be a matter of twenty years since I had anything to do with the Australian business. 2644

Q. Well, were they under conference system then or not? A. What?

Q. The steamship lines?

MR. BURLINGHAM: In the Australian trade.

THE WITNESS: Those were the sailing days; I go back to the old clipper ships.

2645 Q. How frequent is the service to these ports of Iloilo and Cebu? A. Oh, I think there are about three boats a year, to each port.

Q. And how long has that service been maintained? A. Why, I don't believe we have had direct steamers to those ports more than three, possibly four years; I should say not more than three years.

Q. So that this conference, which was formed in 1905, ran along for some five years before any service to these outports was developed? A. Yes, but you must bear in mind that our trade—

2646

MR. MONTGOMERY: No, no.

MR. MACLAY: Let him finish.

MR. MONTGOMERY: No, I don't care for any voluntary information, Mr. Briggs; I asked the question.

MR. MACLAY: You interrupted him right in the middle of his answer.

MR. MONTGOMERY: Well, I had a right to.

THE WITNESS: I only thought my answer was bearing on your question.

2647 Q. No. Now do you recall any other outports that have been developed since? A. In the Philippines?

Q. Yes. A. No, those are the only two.

Q. Those are the only two; and how about in China and Japan? A. Well, for the last two years I have had no shipments for the last two and one-half years, I have had no shipments to China or Japan ports; previous to that time the ports of call were Hong Kong, Shanghai, Kobe and Yokohama.

Q. Those have been ports of call for a great many years, haven't they? A. Oh, yes.

2648 Q. I believe New York is the only port from which you can ship via Suez to the Philippines or China and Japan either? A. I have known steamers to call at other ports for cargo.

Q. When? A. Oh, on one or two occasions, they have gone down to Baltimore, for instance, some port like that, for some special block of bulk cargo.

Q. Yes, but were never on the berth there? A. No, their loading was here, and then they would call and take freight there.

Q. For some large shipment, I presume? A. Yes. 2649

Q. Well, a good deal of this cargo that goes via Suez originates at points that are closer to other ports than to New York, doesn't it? A. Yes.

Q. So that if there were service occasionally from some of those other ports, it would be a very desirable thing, wouldn't it, for the shipper? A. I think you would have to take the rail haul into consideration.

Q. I understand. A. If the laid down cost at a certain port was the same as the laid down cost in New York, and then the steamer would take the cargo there, or if the laid down cost was lower, I mean, at a certain southern port than 2650 in New York, and the steamer would take cargo there, I suppose it would be an advantage.

Q. And there would be the same advantage at this end that there would be at the other end, wouldn't there? In other words, serving more ports here? A. Yes, I see what you mean.

Q. Serving more ports here would be of the same advantage as serving more ports in the Philippines, wouldn't it? A. Why, yes, I know what you mean. If a steamer would call and deliver her cargo at the port that suited you best, 2651 is that what you mean?

Q. Call and take your cargo? A. Or take your cargo.

Q. There is the same reason for calling and taking your cargo at a convenient point, as there is for calling and delivering it at a convenient point, isn't there? A. Undoubtedly there would be at times advantages in that.

Q. Wouldn't it be true of a great deal of cargo that goes via Suez, that it could be much more cheaply taken on at some other port? A. Why, I think that would be in a great many cases decidedly to the advantage of the shipper, but I don't think it would be practicable from the steamship end; 2652 they have got all their port charges and so forth.

Q. You don't know much about the steamship men, do you? A. I only speak in a general way, I say I don't believe it would be practicable for a steamer to make the ports of the Atlantic way stations.

Q. You don't know what the arguments from the steamship point of view might be against it, do you? A. Only from a lay point.

Q. Well, in the absence of a conference, and a necessity for concentrating the business at one point where they can

2653 all confer and where the pool accounts can be made up and so on, there wouldn't be any reason, if the lines were operating individually, why some of them could not make stops at other ports, would there? A. I don't believe they could afford to.

Q. Well, why not? A. Well, you have got, if you are under charter, you want to get from one point to another as quick as you can; if you are going to make ports of call on the Atlantic, you have got all your port charges there, additional burden on your cargo. I am not prepared to argue one way or the other, I am only saying as it appeals to
2654 me, it would not be practicable for a steamer to make ports and pick up cargo at different places and go on.

Q. Is there anything about the picking up of cargo at different ports, that makes such stops more expensive than several stops for distributing cargo? A. Why, yes, there is the matter of stowage.

Q. What do you mean by that? A. Why, you have got to stow your cargo on a certain basis to make it economical and properly stowed.

Q. Well, isn't that interfered with just as much by the points of destination as it is by the points of origin? A.
2655 No. For instance, a steamer loads here for certain ports in the East, and her cargo is stowed with relation to the arrival at those ports and the picking out of the cargo.

Q. Yes, but it has to be stowed in a particular way, so that the cargo for the first port will be accessible when they arrive at that port, doesn't it? A. Yes.

Q. And that is something of a problem at times, I should think, isn't it? A. Why, yes, I guess the steamship men have to make quite a study of what their cargo is, and how they are going to stow it.

2656 Q. Wouldn't the same amount of study enable them to solve the problem of more points of origin, more points of—what do you call them? A. Well, if you have got your cargo at a central point, and have got your distribution sheets,—I don't know how they handle it, but all steamers are mapped out as to their different holds, and cargo is stowed in a certain hold with relation to other cargo; certain cargo has to be kept in parts of the ship away from the boilers, where it is as cool as possible, and they have got to load that ship with relation to the whole cargo, not only as to its place in the ship and to the distribution for the steadi-

ness of the ship and seaworthiness of the ship, but also with regard to its unloading. And it doesn't seem to me to be practicable for a steamer to pick up cargo at several points, for distribution at several points. 2657

Q. Well, you say you import from China and Japan and the Philippines? A. From the Philippines chiefly, yes.

Q. Well, do you know how many ports there are in the Far East at which a given steamer picks up cargo for New York? A. No.

Q. Well, more than one, that is to say, the cargo coming to New York doesn't all come from the same port in the Far East? A. Sometimes; I don't know anything about the loading at that end; at the Philippines, they come in there and pick up hemp and sugar mostly, and bring them to New York or to Boston. 2658

Q. Yes, but they already have cargo from some other port when they come there, haven't they? A. Sometimes not; sometimes they come down there in ballast.

Q. But frequently they do, you know frequently they do? A. I have no doubt they do.

Q. You don't know of any reason why it would be any less practicable to do that from American than it would from China, do you? A. Well, excepting that when they get here they discharge all at one port, the operation is reversed. They pick it up at different ports, and discharge at one port; and here they take it at one port and discharge at several ports; they simply reverse operations. 2659

Q. But whatever convenience there may be in that arrangement is apparently from the standpoint of the steamship owner, rather than from that of the shipper, is it not? A. Oh, yes.

Q. You don't know anything about the cost of carriage of cargo by the Suez lines, do you? A. No.

Q. And you don't know anything about the management of the lines? A. No. 2660

Q. From the financial point of view or of their earnings? A. No.

Q. Or their investments? A. No.

Q. And when you say that the rates are reasonable or unreasonable—I believe you said you thought they were not unreasonable, is that it? A. Yes.

Q. That is not based on any knowledge of your own of

2661 what rates would have to be charged to give a reasonable profit for good management? A. No.

Q. You never have been charterers of tramp steamers? A. No.

Q. Why don't you do that? A. I don't know as I can answer that question; I don't think we have ever considered it. We are not shippers of a sufficiently large quantity of cargo by ourselves to charter for ourselves, and we are not steamship people.

Q. Well, state whether or not it is a practical thing for a merchant to charter steamers and endeavor to cumulate car-
2662 go and get it out there? A. I shouldn't think so.

Q. Why not? A. Well, it is out of their line of business. First, you have got to get your charter, step into the market as an outsider and get a charter at a reasonable rate, and you have got to provide your cargo and properly provide a cargo, a return cargo to some other point where you give up your charter, and you have got to take the responsibility of the steamer for that time and see that she is taken care of, and the cargoes provided.

Q. In order to make it at all profitable, the ship would have to be nearly full and nearly down to her marks, wouldn't
2663 she? A. Oh, yes.

Q. And it is difficult, I suppose, for one merchant— A. I don't think it would be practicable for one merchant.

Q. How about combining with a lot of other merchants, what are the objections to that? A. I think you are getting there into a point where— You mean, several merchants combine to charter a steamer and load their cargo?

Q. Yes. A. I don't believe you could ever get three or four merchants to work together.

Q. That is to say, there would be— A. (Interrupting)
2664 Too much competition and jealousy. I don't want other merchants to know my business.

Q. So that, to sum up, then, it would be an impractical thing? A. Absolutely, to my mind.

Q. And even though rates were very high by the regular lines, you would pay those rather than embark in the business of chartering? A. Personally, I would.

Q. You say you have a contract with the civil government at Manila? A. I say we have from time to time contracts with them.

Q. Well, have you now? A. We have contracts with the commissary, the army; we have nothing at present with the civil government, that I recall. 2665

Q. Do you sell them at a delivered price, or do they buy it here and pay the freight? A. What we sell them out there, we sell them at prices delivered into their warehouses in Manila.

Q. Well, if the Government has the great advantage in rates, why don't they buy it f. o. b. New York? A. They do, most of their stuff.

Q. Well, then, for example, why is it an advantage to sell that way? A. Why, within the last year or two, the policy has been to buy some of their commissary supplies in Manila. I think it is only two years they have done that. Now, they open bids twice a year, and everybody bids, and they take out what suits them and the rest they say, "We will buy in America." We can chase up the hill with all our forces and get a little bit, and then the rest they say we will buy in America. We don't get the bulk of it by any means. It is just as I say, we all put in our bids, and then they pick out what suits them and the rest they turn us down on. 2666

Q. You say that the sailings are fairly regular now? A. Yes. 2667

Q. Well, that is more or less of a recent improvement, isn't it? A. Well it has been getting more and more regular as the time went on.

Q. Yes, and you wouldn't say that in 1905, the latter part of 1905, for instance, the sailings could be called regular? A. No, I would want to qualify that the same way as I did before. I would have to explain it really, why they are not. I can, in a way, explain it.

Q. I don't care about why, all I want is the fact. A. The fact is that, as I say, their service has been getting more regular and more satisfactory right along. 2668

Q. The trade, of course, has increased since 1905 to quite an extent, hasn't it? A. Oh, yes, yes.

Q. About what proportion would you say that the business has increased? A. I would fix it at 1909; I would say that since that time I suppose the business has fully trebled.

Q. Fully trebled, with Manila or with— A. (Interrupting) No, with the Philippines.

Q. With the Philippines, I should say. So that the de-

2669 mand for regular sailings has been present? A. Certainly.

Q. The demand for regular sailings has been present since that time, that was not before, so much? A. No.

Q. And the necessity? A. Yes.

Q. Up to 1909 you would not say that the sailings had been regular? A. No, they were not regular; that is, they were approximately regular.

Q. And in 1909 even, there was considerable inconvenience, wasn't there, caused by the lack of regularity? A. There was no fixed time that a steamer was going to sail. It was only approximate, it might vary five or ten days or so.

2670 Q. And how long have they had fixed sailings? A. Oh, for the last two years they have had them practically fixed; they have had almost schedule.

Q. About two years; so if this conference was formed in 1905, or its predecessor was formed in 1904, it took about eight years to get to a point where they had fixed sailings? A. Yes.

Q. And you wouldn't say, then, that that was a result of the conference alone, would you? A. A combination of the conference and the increase in the cargo offering.

2671 Q. But you couldn't say that, with the increase of business, individual lines would not have brought about the same situation, could you? A. That is speculation.

RE-DIRECT EXAMINATION by Mr. Burlingham:

Q. What do you think about it, if they had been individually working without competition, whether they would have had fixed sailings by this time? A. Well, as an opinion I think we have more regularity under the present arrangement than we could by several individuals.

2672 Q. When you spoke of the rates and said that in your opinion they were reasonable, were you considering them from the point of view of the steamship owners and their investment, or from the point of view of the merchants and shippers? A. The shippers.

Q. You spoke of a rate of $10.50 in your answer to Mr. Montgomery; is that for general cargo? A. That is a general cargo rate.

Q. And how much does that comprise, general cargo? A. You mean what proportion?

Q. Yes? A. Oh, I couldn't say.

Q. Well, a large or small proportion of the shipment? A. The large majority of the shipments would go on the general cargo basis. 2673

Q. General cargo; and do I understand you to say that that has been a comparatively stable rate? A. To my recollection.

Q. So that you don't have to inquire, shipment by shipment, but take it for granted that it will be the same? A. Oh, yes.

Q. Unless you receive notice through your brokers? A. Yes.

Q. And you always do receive notice through Mr. Rodeman in regard to it? A. Always get notice of any reduction or advance. 2674

Q. Referring to what you said in answer to Mr. Montgomery's question as to competition by the overland route, what was it you said? I didn't get it exactly. A. I said that certain commodities moving from certain districts, practically the Chicago district or west, by reason of their bulk as compared with their weight, could be shipped cheaper overland via Pacific ports.

Q. Are not the rates by the conference lines on the whole, considerably cheaper than the through rates overland and by the Pacific? A. Oh, yes, yes indeed. 2675

Q. Materially so, are they? A. Materially so.

Q. Aren't there certain articles that come overland all the way, take hemp for instance? A. Well, I don't know about hemp.

Q. That is an importation? A. It is an importation, but I don't handle the hemp shipments, because we have always handled them through a firm of brokers here.

Q. Yes, but your experience is sufficient to be able to state whether large quantities of hemp do come overland? A. I think most of the hemp comes through the Canal, but I wouldn't— 2676

Q. Would you undertake to say that a considerable portion of it does not come overland? A. What I mean is, I don't believe much hemp comes way through to New York; certain hemp comes through to the Middle West.

Q. On exports from here, what about sewing machines, do they go overland?

MR. MONTGOMERY: If he knows.

2677 Q. To any extent? A. I couldn't tell.

Q. What about tobacco products, cigarettes, Shanghai cigarettes and so forth, how do they go? A. I don't know.

Q. You told Mr. Montgomery something about a special case where you had a shipment of steel for a mill at Iloilo; I would like to have you give the complete circumstances of that shipment? A. Why, that was the whole material for a sugar mill at a point near Iloilo.

Q. And what line were you dealing with, and what people? A. What steamship line?

Q. Yes, if you remember. A. Why, it went on different
2678 lines; it was distributed over several steamers.

Q. And were they steamers bound to Iloilo, or were they bound to Manila and made a special call? A. They were shipped on steamers which made Iloilo a port.

Q. Did the steamers go there specially for your shipment? A. I couldn't say that; the material in the aggregate, was sufficient to make it a desirable port, with what other cargo they might have had in mind.

Q. It was a large order, was it? A. It was a complete equipment for a sugar mill.

Q. What was it that you wished to say with regard to
2679 conditions of shipment to Cebu and Iloilo? You were asked something about your trade with those ports, and you said that it had been developed since 1910 and had not before, for a certain reason. I want to know what that reason was; you began to answer, but did not complete the answer. A. I was going to say that in 1909 the tariff was changed, by which there was an interchange of commodities between the Philippines and the United States on a free basis.

Q. Oh, our United States tariff? A. And that materially increased our trade with the Philippines, so that since that
2680 time there has been more cargo going to the Philippines than there was before.

Q. Now if I understand what you have said about sailings, sailings are now practically fixed, and in 1904 and 1905 they were comparatively irregular, but there has been a steady improvement, is that it? A. Yes.

RE-CROSS EXAMINATION by Mr. Montgomery:

Q. You say that in calling the rates not unreasonable, that is from the standpoint of the shipper? A. Yes.

Q. Well, what standard do you adopt and have you in mind in determining whether the rates are reasonable or unreasonable? A. Well, I was drawing in my own mind the difference between a fixed established rate, which you could count upon this month or some months ahead perhaps, as against the unstability of rates which varied almost by the hour. 2681

Q. Well then you mean, don't you, that even though the rates are higher than they ought to be— A. (Interrupting) I don't think the rates are as high to-day as they were fifteen years ago.

Q. Well, you don't know about that? A. Not specifically, but as a matter of recollection I should say they were not. 2682

Q. But you don't know whether the cost of operation has changed? A. No.

Q. You don't know anything about that either? A. No.

Q. But what you do mean by saying that you are fairly well satisfied by the rates, is that you care more about the uniformity of the rates than you do the amount of the rates themselves, is it? A. The stability of the rate enables me to make forward engagements covering a period of months.

Q. And you meant that they had been reasonably stable? A. Yes. 2683

Q. You didn't mean that they had been reasonable in amount, necessarily? A. Well, I don't know how to answer that. The rate is satisfactory to us, in its stability, and it is not in its relation to our sales. I mean, we can lay goods down in Manila at certain prices covering cost of goods and cost of freight, insurance and charges, and so forth, which enable us to sell our goods in competition with other people.

Q. But you don't know what rates those other people have to pay? A. I assume that on the shipments from here they are paying the same rates as I am. 2684

Q. And after all, that would not affect the question of whether the rates were reasonable for the owner, since you and your competitor are both paying the same rate there would be no advantage on rates even though they are very high to both of you? A. It doesn't make any difference whether they are $10 or $20, if they are all paying the same and they are stable.

Q. And you don't care, for your business, whether the rates are high or not? A. Not if I can land the goods and

2685 sell them in competition. I am a trader; I am not a commission merchant, I am a trader.

Q. And if all your competitors have to pay the same rate as you do, you don't care very much what that rate is? A. So long as I can land the goods and sell them.

Q. And you wouldn't say, and you have not had in mind, and you didn't intend to be understood as saying, that the rates were reasonable in amount? A. Why, I would say that the rates of freight which we are paying at present on our different lines of cargo to Manila, is reasonable from our point of view, because of their stability and because of
2686 the fact that our competitors are paying the same price, and our landed costs are such that we can sell in competition, get rid of our goods. Now as to the exact amount of the rate, as regards $10 against $5 or $15, it is immaterial so long as we can do business on the rates.

Q. So that you don't, after all, have any opinion about whether the rates ought to be lower? A. No.

Q. Whether the steamship lines ought to charge less? A. No.

Q. You have no opinion about that? A. No. I don't say the rates should be lower or should be higher.

2687 Q. Or should be what they are? A. No.

RE-DIRECT EXAMINATION by Mr. Maclay:

Q. In brief, then, when you say that the rates are reasonable, you mean that taking into consideration the known amount of them, and the competition with other merchants, and all the points at which the rates touch you as a merchant, they look reasonable to you? A. Yes.

MR. MONTGOMERY: I ask to have that stricken out as being manifestly something that the witness has
2688 just said he doesn't mean, and as grossly leading.

Q. If the rates reached some very high point, wouldn't your European competitiors beat you out on these contracts?

MR. MONTGOMERY: That is objected to as calling for a conclusion of the witness, and obviously he doesn't know what the cost of production to European competitors may be; he has testified that he doesn't know what the European rates are, and it is incompetent, irrelevant, immaterial and speculative.

THE WITNESS: Why, to my mind the whole point is, can we land our goods in the Philippines on a basis which will allow us to compete? If we cannot, we haven't any cargo to offer. 2689

Q. If the rates reached a point where it was cheaper for you to ship overland, you would do that, wouldn't you? A. Yes.

AFTERNOON SESSION.

WILLIAM A. BURNS, a witness called in behalf of the defendants, being duly sworn, testified as follows: 2690

DIRECT EXAMINATION by Mr. C. C. Burlingham:

Q. Where do you reside? A. Forest Hills, Long Island.

Q. And what is your business? A. Manager of Shewan, Tomes & Co.'s office in New York.

Q. How long have you been connected with Shewan, Tomes & Co.? A. Five and a half years.

Q. That is the firm mentioned in the papers in this case which has its principal place of business where? A. 12 Broadway. In Hong Kong, do you mean? 2691

Q. In Hong Kong? A. Yes.

Q. And is represented here in New York how? How is it represented here in New York? A. I represent them here in New York.

Q. As manager? A. As agent and manager here, under power of attorney.

Q. That is a firm, is it? A. Shewan, Tomes & Co. is a partnership.

Q. A partnership? A. Yes.

Q. Who are the partners? A. At the present time Mr. Shewan is the sole partner. 2692

Q. And he resides where? A. Hong Kong.

Q. Before you joined that firm with whom were you connected? A. Shall I start from the beginning, or work back?

Q. Well, you might start from the beginning? A. In 1889 I joined the firm of Hemenway & Brown, of Boston, as a junior.

Q. What was their business? A. Shipping to the west coast of South America, Chili and Peru.

2693 Q. Merchants? A. Merchants; they had their own house in Valparaiso, carried stocks out there for their own account, and owned sailing vessels.

Q. And what were their principal exports? A. General supplies from this country; they were agents for the Chilian Government railways, and Huanchaca Silver Mine.

Q. Did they import also? A. Imported wool and other products from Chili.

Q. How long were you with them? A. A matter of eight years.

Q. As a member of the firm? A. No.

2694 Q. As an employe? A. As an employe.

Q. That brings us to 1897; what did you do from that time? A. In 1897 the business was liquidated.

Q. From 1897, go on? A. The business was liquidated, and I joined the firm of Brown, Chadwick & Co., made up of the American retiring partners of the old firm of Hemenway & Brown, and that business was solely devoted to the importation of nitrate of soda from the west coast of Chili in sailing ships. Then that business in two years was liquidated and I joined the firm of Henry W. Peabody & Co.

2695 Q. In what capacity? A. Compiling special codes and revising their cable codes for them, for their various departments.

Q. You were employed by them for that purpose? A. Yes, for that special purpose.

Q. Were you in Boston or in New York? A. In New York; I came to New York with the firm of Hemenway & Brown in 1892. And after a year with Peabody I joined William E. Peck & Co. and went to South Africa to represent them.

Q. In what way to represent them? A. To start business

2696 for them in South Africa.

Q. How long were you there? A. Three years.

Q. What did you do there? A. Acted as general manager of the business, salesman, etc., for the introduction of the various lines that they represented from this country.

Q. They are principally exporters? A. Manufacturers' agents, primarily.

Q. And what do they export? A. Everything that this country produces, general exporting business and everything that there is a market for.

Q. To what countries? A. William E. Peck & Co.? 2697

Q. Yes? A. They export to Europe, the United Kingdom, the Continent, Australasia, South Africa, China, Japan.

Q. South America? A. South America, yes.

Q. And you say you remained in South Africa three years? A. Three years, yes.

Q. What ports were you in? A. Cape Town, East London, Port Elizabeth, Durban, Johannesburg.

Q. Johannesburg is inland? A. That is inland, yes.

Q. The rest are all seaports? A. Yes.

Q. And did they make many shipments while you were there? A. Yes, they did a fairly good business. 2698

Q. By what lines? A. The Union Castle and Bucknall and other lines that were operating then from New York.

Q. Were they operating in conference then or as competitors?

MR. MONTGOMERY: If he knows.

Q. If you know? A. When I first went to Africa, they were.

Q. Operating in conference? A. Yes.

Q. And did it continue so during the whole of your sojourn there? A. Except the conference was more or less broken up when Houston came into the service there and commenced to cut rates. 2699

Q. And while you were there was there a rate war? A. There was.

Q. How long did it last? A. Why, it lasted, to the best of my recollection for a matter of a year and a half or two years.

Q. Then you had an opportunity, did you, to see the system of conference agreements and the system of competition at work in South Africa? A. I saw mostly the system of competition, as it was when I was there. 2700

Q. Then you returned to this country after three years in South Africa? A. Yes.

Q. Go on, tell what your further experience has been? A. I then became an officer and director in the firm of Brown & Co.

Q. Is that your own firm? A. Yes.

Q. A corporation, was it? A. Yes, a corporation, Mr. Brown having been one of the junior partners of Hemenway

2701 & Brown; and after being here for a matter of six months I started on an extended trip around the world.

Q. For whose account? A. For account of Brown & Co., in order to form connections abroad and build up the general business.

Q. Did you go to the far east? A. Yes.

Q. What ports did you go to? A. Hong Kong, Shanghai, Kobe and Yokohama.

Q. Did you go to the Philippines, too? A. I didn't go to the Philippines.

Q. How long were you away on that trip? A. Eighteen
2702 months.

Q. What specially was your purpose in going out? A. The firm of Brown & Co. had contracts with American manufacturers to represent them abroad; the J. G. Brill Company, Wason Manufacturing Company.

Q. What does the J. G. Brill Company make? A. Electric car trucks and street cars.

Q. You named some other firm? A. Wason Manufacturing Company.

Q. What is their business? A. Builders of railway passenger cars, trucks, etc.

2703 Q. Your corporation, Brown & Co., were their selling agents or exporting agents? A. We were their foreign selling agents.

Q. And you wished to develop business for them, I assume? A. Yes.

Q. So you visited the various ports; did you study the conditions of trade? A. I did.

Q. Between the United States and those ports? A. I did.

Q. And the systems of transportation then in existence? A. I did.

Q. What was the condition then, was it competitive or
2704 conference? A. I left New York in July, 1905, and I arrived in China in 1906, and in 1906 the conference was in operation.

Q. You stayed eighteen months, and then returned to this country? A. Yes.

Q. When did you get back? A. I got back here in the latter part of 1906, I think in December.

Q. And from that time on what was your business? A. I was here about a year and then Brown & Co. in joint account with Shewan, Tomes & Co., sent me back to China in 1908.

Q. For what purpose? A. For the purpose of representing 2705
these various manufacturers for whom Brown & Co. were agents, and in the endeavor to extend their business in China.

Q. Shewan, Tomes & Co. and Brown & Co. were in the same business? A. Shewan, Tomes & Co. were merchants and shipping agents; and Brown & Co. and the manufacturers felt that co-operation with them through their organization in China would lead to broader expansion of the business than could be obtained in any other way.

MR. MONTGOMERY: Co-operation between whom, between Shewan, Tomes & Co. and Brown & Co.?

THE WITNESS: Brown & Co. and Shewan, Tomes & 2706
Co.

Q. How long were you gone? A. I was out there for a year.

Q. This was 1908 and 1909? A. Yes.

Q. And then? A. I returned here in January, 1909, in the employ of Shewan, Tomes & Co., coming to New York as manager of their machinery department, as purchasing agent here.

Q. And you have maintained that relation ever since, have you, from 1909 to date? A. Yes, in 1909 I came back, except 2707
that in 1912 I was made manager of the office here.

Q. General manager of the office? A. Yes, on Mr. McMurtrie's going out to China.

Q. Have you ever had anything to do as practical working manager of steamship companies? A. No.

Q. But the defendant, the American Asiatic Steamship Company, has some relation to Shewan, Tomes & Co., has it not? A. Shewan, Tomes & Co. are the principal shareholders in that company.

Q. Are you officially connected with the American Asiatic Steamship Company in any way? A. Yes. 2708

Q. In what way? A. Vice-President and Director.

Q. When were you made Vice-President and Director? A. About three or four weeks ago.

Q. Succeeding whom? A. Succeeding Mr. Tomes, who retired from the business.

Q. Have you had anything to do with the practical management of the line operated by the American Asiatic Steamship Company? A. No.

2709 Q. I think the Far Eastern Conference dates from April 13, 1905; had you experience prior to that in the shipment of cargoes to the Far East? A. No.

Q. These houses that you had been with had been shipping to the Far East prior to that? A. They had been for instance, the house I was with originally did no business other than in South America; the only business I came in direct contact with when with William E. Peck & Co. was the South African business.

Q. What experience have you had with rate wars, or unrestricted competition between steamship lines?

2710 MR. MONTGOMERY: Objected to as incompetent, irrelevant and immaterial, as the witness has shown that he knows of no period of competition in this particular traffic, and conditions may be entirely different in any traffic he knows about. He has shown no knowledge of the agreements between steamship companies in any traffic; it is hearsay.

THE WITNESS: In the South American trade, that is with the West Coast, I have seen the actual operation of the loading of a steamer by the West Coast
2711 Line at the same time the Merchants Line were loading a steamer, have a client come to us to book freight and get a rate, go away and come back stating that he must have so much lower rates, because the Merchants Line were quoting it, both lines working and lowering their rates gradually until there was nothing in it for either of them, in order to get the cargo one away from the other.

Q. That is in South American West Coast business? A. Yes, West Coast trade.

2712 Q. I did not want you to go into details so much; I wanted to know the particular trade where you had experience; proceed, please? A. And also in the South African trade.

Q. How wide was your experience there in respect of this subject? A. There the experience extended to endeavoring to sell merchants during a period of rate war, and getting their point of view and having them insist upon my guaranteeing that the cargo would be shipped at as low a rate as anybody got, before they would place the indent.

Q. Your experience then was strictly as a merchant? A. As a merchant.

Q. As a seller? A. As a seller. 2713

Q. Have you also had experience in either of those trades, or in any other trade, of the results of conference agreements between steamship lines? A. The results in Africa were quite apparent; when I first went out it was a simple matter to sell merchandise.

Q. Why? A. Because the rates were fixed, I could quote a landed price.

Q. You mean by fixed, they were stable? A. They were stable; later, when the Prince and Houston Lines came in, it was impossible for me to do anything more than quote an f. o. b. price, because I couldn't be sure of the rate; I 2714
couldn't give the merchant a landed price, I couldn't take the gamble; therefore the merchant had to take the gamble.

Q. From the point of view of the purchaser, what do you say of the advantages or disadvantages of a system of unrestricted competition? A. Well, that voiced by merchants I tried to sell, the opinion voiced was—

MR. MONTGOMERY: I object to what somebody said as obviously not within the knowledge of the witness, and hearsay.

THE WITNESS: Said to me. 2715

MR. MONTGOMERY: And as incompetent, irrelevant and immaterial.

Q. My question was a general one, as to the effect on purchasers? A. The statements made to me were that indents would not be placed, business would not be placed freely until the rate war was over and the steamship companies had arrived at an agreement whereby the merchant would know what the goods were going to cost him, landed.

Q. Did you subsequently see established rates under a conference system? A. Yes, just prior to my coming home, 2716
in 1904.

Q. What was the effect on trade, if any? A. The effect on trade in general, in Africa at that time, there was a general boom, because the war had just ended and freights had become established on a stable basis, and everybody did as much business as they could possibly handle.

Q. Besides the South African trade, in what other trades have you had experience of the effects of a conference system? A. In my merchandising business in China, where in operat-

2717 ing with, for instance, a railway in the south of China, and endeavoring to contract with them for a supply of rolling stock, passenger cars, running into 100 tons cubic measurement each, the difference in the rate of five shillings making a difference of $120 gold in the cost per car, it becomes very essential to know that the rate you obtained to base your bid upon is as low as your competitors in Belgium, England, France or Germany can obtain on the same class of cargo.

Q. For this class of cargo have you the merchants of those nations as competitors? A. Yes, always.

Q. And does the freight rate play any important part in
2718 the computation? A. It plays a most important part.

Q. Go on, please? A. In operating, as I say, I obtained in Canton a contract for the first railway passenger cars for the Canton-Hankow Railway, and in that case found it essential to operate through Shewan, Tomes & Co. in order to operate with a friend who had a knowledge of the rates of freight being quoted from the various countries I speak of, so that we should know, as importers, shippers and merchants, that we were basing our bids upon a rate which would give us a fair chance of getting the business.

Q. In whose service were you then? A. Brown & Co.; I
2719 was Vice-President of Brown & Co. at that time.

Q. Was that before your relations with Shewan, Tomes & Co. began? A. Yes, before I joined them as an employee.

Q. I see. Well, now, from this experience of yours in various trades and at various times, what do you say generally as to the comparative advantages or disadvantages of unrestricted competition and the conference system?

MR. MONTGOMERY: That is objected to as incompetent, irrelevant and immaterial, and calling for a conclusion of the witness.

2720 THE WITNESS: Regularity in the service, ability to contract ahead for regular shipments, speedier service, consequent shorter voyages, less interest, and through better and speedier ships a well regulated rate of insurance on all cargo we ship.

Q. What about stability of rates? A. Well, that is the principal point in the whole thing.

Q. Do you get that under unrestricted competition? A. Never.

MR. MONTGOMERY: That is objected to as leading and calling for a conclusion of the witness, and as incompetent, irrelevant and immaterial. 2721

Q. You spoke of the ability to make forward contracts; explain that a little more in detail, please? A. Well, at the present time I have before me a request for a tender on supplies, plant and tramway system for a mine. There is a lot of heavy material to be shipped, and it is necessary to have a rate to base our bid on. We get that rate fixed now, and undoubtedly—

MR. MONTGOMERY: Just a moment. I think it ought to appear whether this is for some point within the radius of the agreement. 2722

THE WITNESS: In China. We get the rate fixed now, and it will be a matter of six or eight months before tenders are opened. In the meantime we know that that rate will be held for us, and that we can put in a bid naming a certain time of shipment, because we have regularity of sailings to count upon. In purchasing cotton yarns for our mill in Hong Kong, we buy to cover the whole year, monthly shipments, so as not to have too large a stock to carry out, and tie up too much money at one time. The regularity of service here enables us to figure out very closely our monthly shipments, so that we can keep our supplies at a certain minimum. 2723

Q. Could you make those contracts if you had no conference? A. It would be impossible.

MR. MONTGOMERY: I ask to have that stricken out as being a conclusion of the witness and a conclusion about a matter which he has shown he has no experience with in the trade. 2724

Q. Are you familiar with the rates, generally, from the United States to China and Japan? A. In a general way.

Q. Are you familiar with the rates for commodities of the same sort from European ports generally? A. Not generally, only in specific instances, where we get them for comparison.

Q. With those specific instances in mind, what do you say as to the comparative rates on cargoes from Germany and England and from the United States to the Far East?

2725 MR. MONTGOMERY: That is objected to as calling for a conclusion, and for the reason that the witness has shown that he has no general information on the subject and because the rates themselves and the specific instances would be the best evidence. It is incompetent, irrelevant and immaterial.

THE WITNESS: Rates from this side, as a rule, run fairly equal to the rates from the other side.

Q. What commodities have you in mind in making that statement? A. Steel products, bridges, railway material
2726 and supplies, cotton piece goods.

Q. How about domestics and cotton piece goods? A. I said cotton piece goods and domestics, &c.

Q. Do you have to do with those; do you ship them to any extent? A. We have done a large business in them, not any great amount recently; the cotton piece goods business with China from this side just now is at a low ebb.

Q. Well, do you know what the rates are on domestics and cotton piece goods from Europe? A. Not offhand, no.

Q. During your experience with the American trade and trade between the United States and the Far East, has
2727 there been any change in the ports or in the development of ports in China and Japan? A. There has been an extensive development in the so-called outports.

Q. What do you mean by an outport? A. Special arrangements made, for instance, for a port like Tientsin, which is not a regular port.

Q. That is up in the Gulf of— A. Chili.

Q. That is the port of Pekin, if it has a port, isn't it? A. Yes, it is the port of Pekin.

Q. Has that been developed within recent years? A. Yes. In 1909, for instance, as an example of the development, the
2728 firm of Shewan, Tomes & Co. bid on and obtained a contract for supplying the mechanical plant for the Bureau of Engraving & Printing for the Chinese Government. It was necessary to deliver material five miles out of Pekin, consequently necessary for us to figure a rate of freight from New York to Pekin itself, that is the ocean transportation to Tientsin, by rail to Pekin, and thence out to the site of the Bureau. The conference, in 1909, gave us a rate through to Pekin, providing that they would put a steamer in to Taku Bar, where the ocean steamers discharge into lighters.

Q. Is that the Bar of Taku? A. Yes.

Q. Go on. A. The contract necessarily specifying that they would, for a certain minimum of tonnage, send a regular steamer into Taku with this cargo; that is, if we had 400 tons that we could put into a ship, for that 400 tons they would carry from Shanghai to Taku Bar. 2729

MR. MONTGOMERY: Was that agreement in writing?

THE WITNESS: Yes, I think that is in the records of the conference minutes, I think.

MR. MONTGOMERY: I ask to have this stricken out as not the best evidence. 2730

MR BURLINGHAM: It is only an incident; he can finish.

THE WITNESS: The record is in the conference minutes. The carrying out of the contract was delayed, owing to the revolution in China. In consequence we have just finished shipping the final material for the Bureau, a matter of five years, and our rate has held to Pekin through those five years.

Q. Was that a matter of bids? A. A matter of our bidding out there.

Q. Against whom? A. Well, against the various merchant houses out there representing various manufacturing interests the world over, such as the German and English manufacturers of electrical material, &c. 2731

Q. Now you are carrying out that contract? A. That contract has been carried out, though extending over a period of five years, without any differentiation in rates or anything.

Q. Would that have been possible if there had been no conference?

MR. MONTGOMERY: I object to that as calling for a conclusion, and as incompetent, irrelevant and immaterial. 2732

THE WITNESS: Impossible.

Q. Is that an extraordinary or an ordinary thing, for you to have to compete with merchants in foreign countries? I don't mean on a bid, but generally in the shipment of merchandise? A. That is always the case.

Q. And did I understand you to say a little while ago

2783 that the freight rate plays any serious part in the matter of competition? A. The freight rate in such a case must play a very important part. In many cases, deponding upon the merchandise, the freight rate will equal twenty to twenty-five per cent. of the first cost of the material.

Q. If the New York business, seeking to sell to the Far East, had only to compete with New Yorkers, what difference would it make whether you had a high or a low rate of freight, if all had the same? A. None whatever.

MR. MONTGOMERY: Objected to.

2784 Q. How is it in your competition with foreigners, is the rate important there? A. Why, the rate fixes the landed cost of the goods; if the foreigner has the lower rate and lands his goods for less than we can from here, why naturally no business would come here.

Q. Is that the reason why you say that the freight rate is so important a feature? A. Yes.

CROSS EXAMINATION by Mr. Montgomery:

Q. How long have you been familiar with the steamship business of the American Asiatic lines? A. I have had a
2735 general knowledge of it for the last two years and a half.

Q. Only two years and a half? A. About two years and a half.

Q. Your knowledge of it doesn't go back to the time when the American Manchurian line started? A. No.

Q. So that you don't know whether or not that line started as a result of the failure of the conference lines to serve the Port of Dalny? A. No.

Q. Well, your conclusions seem to be that where there is a monopoly of business of carrying in a certain area on the part of a number of lines, that they are enabled to do cer-
2786 tain things better than they can be done under competition, is that right? A. I never admit the possibility of a monopoly in steamship carrying, from my practical experience of twenty-five years.

Q. You don't admit that? A. No.

Q. Well, you speak of a period of competition as distinguished from some other period; now I am in the habit of speaking of a period where there is no competition as a period of monopoly. I wish you would explain how there

can be a period of no competition that is not monopolistic? 2737
A. I don't know of a case where, in my experience of the trade, as I have spoken of, there is not competition, especially referring now to the Far East.

Q. Well, what do you mean by a competitive period, then? A. I have never, as I said, had any experience of what is referred to as a competitive experience in the Suez ocean traffic to the Far East; my experience started in 1906, when the conference was in existence.

Q. What elements of a monopoly are lacking in this Far Eastern business to-day, in the all-water route from New York to the Far East? A. The fact that Middle States 2738
cargo take certain types of machinery and other products that will bulk largely, and possibly something would weigh less than a ton and measure over a ton and a half, shipments from Chicago or the Middle States, that cargo would probably go overland. 50 to 60 per cent. of our imports, that is of the firm of Shewan, Tomes & Co., we to-day bring via Pacific and overland; that is what I mean.

Q. What is the nature of those? A. Why, grass rugs from Japan, Tientsin carpets, carpets from China and fire crackers from Canton, and all that.

Q. Those are delivered in New York? A. Delivered as 2739
far east as New York, all over the country.

Q. Well, they are articles which are either of higher value or else there is some other reason why they should move trans-Pacific, isn't there? A. No, in many cases it is a case of landing them here at a less cost.

Q. At a less cost? A. Yes, our average landed cost is less. For instance, last year we brought a very large amount of sea grass furniture from Hong Kong.

Q. That stows big? A. Yes, we couldn't afford to bring it Suez; it comes overland. The rate is such that it lays 2740
down to any point in the United States for less.

Q. So that with certain articles, certain commodities, owing to the fact that the railroads carry by weight only, it is possible for the rate to be lower via the Pacific route? A. Yes.

Q. And the Trans-Continental lines; but generally speaking, is it not a fact that it is very much cheaper to ship by water via Suez? A. The rates average, I suppose, more favorably by Suez than they would by both land and water,

2741 especially from eastern ports; there is a marked line, west of Chicago and east of Chicago.

Q. Well, I suppose that when you get as far west as San Francisco, the advantage of the Suez route would have entirely disappeared? A. Yes, as far as my knowledge extends, it does.

Q. But for shipment to and from the territory immediately around New York, the eastern portion of the United States, there is a natural advantage in favor of the water route via Suez, isn't that true? A. Yes.

Q. And the only limitation that there is upon the mon-
2742 opoly of these lines is the fact of the alternative of the more expensive methods of shipping by the Trans-Pacific, is that right?

MR. BURLINGHAM: I object to the assumption that any monopoly exists.

Q. Is that right, Mr. Burns? A. That is right.

Q. So that if you eliminate the Pacific route, the monopoly of the balance of the business is held by the Suez lines, isn't it? A. I shouldn't say that.

Q. Why not? A. I think, presupposing any such condi-
2743 tion, it is impossible to show what the condition of the Suez service would be were that possible method of shipment removed; other factors might come in. It is not impossible for us, if we had a nucleus of cargo to do it, to charter to-day, if the rates were right, and put a ship on the berth and carry our own cargo, if we had say five or ten thousand tons to carry; there is nothing to prevent it.

Q. That would be going into the steamship business, wouldn't it? A. Certainly.

Q. And you are in it already, you are in the steamship
2744 business already?

MR. BURLINGHAM: Who is "you"?

Q. Shewan, Tomes & Co.; do you mean that Shewan, Tomes & Co. could charter a ship? A. Yes.

Q. To carry their own stuff? A. They certainly could; there is nothing in the world to prevent them.

Q. And by so doing they would, of course, be competing with themselves? A. Not necessarily.

Q. How many merchants are there in New York, who are

in a position to charter steamers? A. Well, that is rather a broad question. 2745

Q. Yes. A. There are a great many.

Q. In the two years that you have been connected with the management of Shewan, Tomes & Co., how many times have there been charters made for the Far East outside of Standard Oil Company products and the United States Steel products exporting companies products, to your recollection? A. There have been none outward; there have been inward charters of three sailing ships last year, and two this year, for bringing general products from China to New York.

Q. Of sailing ships? A. Yes. 2746

Q. And who were the charterers of those? A. Arnold, Karberg & Co.

Q. And what was the nature of the cargo? A. The nature of the cargo was general products from China, general furniture or mattings, bamboos, &c., and Shewan, Tomes & Co. last year were bidding for those ships, to charter.

Q. Do you know how long it took those ships to make the voyage? A. One of them made a more or less record for the voyage; I think about 105 days.

Q. 105 days; and how long did the others take? A. I haven't the record for them. 2747

Q. Do you know, about? A. I think they averaged about 100 to 110 or 115 days; it depends on the voyage.

Q. Averaged 100 to 115? I thought you said 105 was the record? A. That was a fast voyage. I am not sure about the other two ships, especially as one of them went to Durban, Natal, South Africa.

Q. How long does the steamer take ordinarily in this traffic? A. Well, it depends on from what port the cargo is shipped. Of course, Japan cargo on a boat stopping at China ports will take sometimes 60 days to deliver in New York; Hong Kong cargo, 40, 45 or 50. 2748

Q. But those are the only instances which you recall, are they? A. Of outside charters.

Q. Of outside charters; and do you know about what the tonnage was of those ships? A. Not offhand, no.

Q. Do you know whether or not Arnold, Karberg & Co. are still the agents of the American & Oriental Lines in the Far East? A. I do not, no.

Q. Well, a charter of that sort would be feasible only for a very large concern, wouldn't it? A. Any of the large

2749 houses trading in China to-day, six or seven of them, any one of them is capable of chartering those ships.

Q. Any one of six or seven? A. Yes.

Q. But the balance of them would not be, there would be a great many shippers from China; how many shippers are there from China, do you suppose, over these conference lines? A. Shipments from China are handled in such a way that it would be most difficult. Nearly 80 per cent. of the trade is done by these large houses who handle it out there. The Chinese themselves would not be the shippers; they would handle it through the merchant houses, who sell
2750 the material here.

Q. Well, now, in the outward traffic, you don't know of any charters in the time that you have been with Shewan, Tomes & Co.? A. No.

Q. How many of these large firms of shippers that do this 80 per cent. of the business, are there who are not also the agents of the steamship lines in the conference? A. I think I am correct in saying that Shewan, Tomes & Co., speaking of New York—

Q. No, I thought you were speaking of China? A. Oh, of China.

2751 Q. Yes, I understood you to say that there was six or seven firms that did about 80 per cent. of the business from China? A. Yes.

Q. How many of those six or seven are steamship agents? A. Practically all of them act as steamship agents in one capacity or other, in China.

Q. And steamship agents of lines of the conference? A. Yes.

Q. So they would be, by their agreement, precluded from chartering steamers, wouldn't they? A. If the record says
2752 so, yes.

Q. Well, wasn't there some peculiar condition that brought about the charter of those sailing vessels? A. That has been a regular business for all the time I have been in the China trade, on the homeward voyage the Standard Oil Company's ships have carried general cargo from China to the United States.

Q. Do you know what proportion of the cargo of those ships was ore? A. No.

Q. You don't know what the tonnage was? A. No.

Q. Do you know, approximately? A. Not having loaded the ships, I haven't any idea. 2753

Q. You don't know what the tonnage of the ships was? A. Not without reference, no.

Q. Well, roughly? A. Mr. Blake can tell you what the tonnage is; he handles all the ships.

MR. BOYD: The largest ones carry about 5,000 tons.

Q. You have testified, Mr. Burns, that during a period of competition it would be impossible for you to contract ahead; did I understand you correctly? A. It would be a gamble no merchant would want to take. 2754

Q. Well, that was not the point. A. It would be impossible; I would not do it under such circumstances.

Q. I understood Mr. Burlingham to ask you whether or not the privilege of contracting ahead, which is offered by the conference lines, would be granted to you by lines that were in competition, and you said no.

MR. BURLINGHAM: I didn't put the question like that, as I remember.

Q. On this Tientsin business, you had a contract with the conference lines, and that was carried out and the rate was protected; then I understood Mr. Burlingham to ask you whether that would have been possible if there had been no conference and that you answered no. Was I wrong about that, or not? A. Yes. I think he asked would that be possible under a system of open competition, and I said no. 2755

Q. It would not? A. I think that is what I said.

Q. If the record should show that the United States Steel Products Export Company made a similar arrangement with the American-Manchurian line to go into Dalny and do the same thing, after the conference lines had refused, why, then, you would say you were wrong about that, wouldn't you? A. Not necessarily, unless they would make the contract with me. The American Manchurian line might make a contract with the Steel Products Company that they would not make with me. 2756

Q. Why? A. Well, possibly greater tonnage or reasons that they might have.

2757 MR. BURLINGHAM: Possibly what?

THE WITNESS: Greater tonnage promised, or something of that sort.

Q. Well, you ship a great deal, don't you? A. Quite a good deal.

Q. And have some influence with the conference? A. Our cargo is very much smaller than others.

Q. You don't mean to say that others get better rates from the conference than you do? A. No, the rates are equal, I know that.

2758 Q. But this conclusion of yours, that a line engaged in competition would not give you a contract ahead, is not based upon any refusal of lines in competition to give you a contract ahead, in the Far Eastern business, is it? A. No.

Q. So that after all, you don't know what would be the case, do you? A. The case of irregularity, no opportunity to ship, would come up, and the necessity of dispatching material on given dates for an outport.

Q. How long has it been true that your conference has offered the ability to ship on given dates? A. If we have,

2759 for, we will say, an outport—

Q. I guess you didn't understand my question. A. Oh, how long has the conference?

Q. How long has it been true that the conference has offered regular stated opportunities to ship to the Far East, from New York? A. According to my recollection, without reference to any records whatsoever, the sailings have been regular since I have been operating in that trade.

Q. Since you have been shipping in the trade? A. Yes.

Q. What do you mean by regular? A. Regularity has been altered, that is, their frequency, of course, or things of

2760 that sort, but not the regularity.

Q. You mean to say they have been sailing on fixed dates for the last five or six years? A. As nearly as possible.

Q. What do you mean by as nearly as possible? It is always possible to sail on a fixed date, isn't it? A. Not always, when a steamer is delayed by stress of weather or things of that sort, and comes in late and the cargo is not loaded in time, so that the steamer is delayed on the berth; it may be delayed four or five days, but the sailings are regular, though not fixed.

Q. Then you say the sailings were as regular in 1906 as now? I don't mean as frequent, but as regular? A. I was in China in 1906. 2761

Q. In 1909 how was it; were the sailings as regular then as they are now? A. I don't know whether the periods of dispatch were the same then, whether it was on a twenty day basis or fifteen day basis, without looking up the record.

Q. I am not talking about frequency, but I am talking about regularity. A. I think they were as regular.

Q. But you would not be certain of that? A. Not without looking up the records, no.

Q. And you wouldn't want to say that the sailings during all the time you have shipped to the Far East have been regular, would you? A. Yes, I would. 2762

Q. And that you could always state months ahead, just when sailings were going to occur, is that right? A. I never said that I can say just when sailings were to occur; that I could contract ahead and provide for regularity of shipments and delivery.

Q. Well, what do you mean by— A. (Interrupting) That is, a merchant has to contract, abroad as well as at home, based upon delivery dates; so then we have to guarantee to deliver inside of, for instance, in a contract made, as we have to do, for shipment of trucks to the Shanghai, China Tramway Company, or anything of that sort, we have to contract to deliver within a certain time or a certain date from receipt of the full particulars here. 2763

Q. Yes. A. Now, I can always estimate within a week or two, and safeguard myself on giving a delivery date at the other side, with the regular service which we have at the present time.

Q. Well, you can do that a little more closely than you could a few years ago, can't you? A. Since I have been operating here, since January, 1909, I have never had any difficulty whatsoever in figuring on any contracts. 2764

Q. How long has it been your practice to contract ahead for monthly shipments of these cotton yarns? A. That I have handled for the past two years and a half; Mr. McMurtrie handled it before.

Q. And do you know whether the custom was the same before? A. The custom was practically the same.

Q. What do you mean by practically the same? A. Well,

2765 in all essentials the same; varying in quantities and details, in connection with the handling of the contracts.

Q. You are the Vice-President of the American Asiatic Steamship Company? A. Yes.

Q. Are you the man that represents that company in regard to the fixing of rates? A. No.

Q. Are you familiar with the rates? A. Familiar with the rates as I look them up, to estimate on various cargoes.

Q. For your own shipments? A. Yes.

Q. Well, you are not familiar with the making of the rates at all? A. No, I don't attend meetings of the confer-

2766 ence.

Q. You don't know what theory the rates are based on, if any? A. I have never attended the conference meetings here, so I don't know what their basis is.

Q. Well, you attend meetings of the directors of your line? A. Yes, but that relates entirely to the affairs of the company itself.

Q. That is what the business of the directors relates to, isn't it? A. Well, the fixing of rates is not by the directors of the company; that is a matter of conference agreement, I believe, according to all the records.

2767 Q. What individual in your line does fix the rates? A. Mr. Blake.

Q. He is the author? A. Yes.

Q. I wondered whether you had ever discussed with your co-directors and officials the rates, sufficiently to know upon what theory they were based, whether it was based on the cost of the charters, or what the traffic would bear, or whether there are any theories? A. At the last meeting of our directors I was elected Vice-President; we have not had a meeting since.

Q. At the last meeting? A. Yes.

2768 Q. So that you have no information on that at all? A. No.

Q. Well, you follow the tariffs, do you, keep fairly close to them? A. Yes, the fluctuation in tariffs.

Q. When was the last revision of your tariff made? A. The rates were altered in general about two months or three months ago, I think; I am not sure about that.

Q. Has there been a publication of those rates? A. I think there has, a general advice to shippers.

Q. We have in the record here some exhibits; I have not 2769
the originals here, but the rates— A. (Interrupting) The printed rates to the shippers, yes.

Q. Yes, the printed rates; Petitioner's Exhibit 16, for instance, is the tariff of rates from New York to Far Eastern ports, dated January 1, 1910? A. Yes.

Q. That was a little black book, as I remember it? A. Yes. Well, the rates have been altered since that, several times.

Q. Have there been any more of those little books printed? A. Not that I know of.

Q. Do you mean there have been general revisions of the 2770
rates a number of times since that time? A. Special rates have been made, and the general rate has been lowered.

Q. When? A. As I say, I think there was a general reduction made about two months ago. Mr. Boyd and Mr. Blake know the exact dates. As I say, Mr. Blake makes the rates and attends to that detail, and I do not myself; consequently—

Q. Never mind that. Did I understand you to say that you don't keep any track, particularly of the European rates? A. Not as far as the merchandise end of our business is concerned. 2771

Q. Well, you cannot tell very well, then, whether there is a parity of rates between American and European rates, can you? A. In specific instances, on large contracts, it becomes necessary for us to determine whether we are on a competitive basis or not. We leave that, for instance, to the steamship interests, from whom we obtain our rates. We state we are going to bid on a contract in which we will have certain specific European competition; we know we are to have it. We say, "Now, we have got to have a rate that is equal to, or better, even, than the rates our competitors in Belgium, France, Germany and England can get 2772
and ship the goods." We put it up to the steamship company or to the conference, whatever you may say, to get us a rate which will be competitive, on which to base our bids upon a landed basis, C. I. F. prices.

Q. Well, you don't always get the business? A. No.

Q. And I don't suppose that you are sure that you always get competitive rates? A. We don't check it up.

Q. No. There are lines other than the conference lines

2773 that sometimes ship from Europe, aren't there, to the Far East? A. That is without my knowledge.

Q. Well, there are sporadic shipments by tramps, aren't there, from Europe more than from this country? A. Yes.

Q. And the rates they charge are usually below the conference rates from Europe, aren't they? A. Even though they were—

Q. No, not even, but aren't they? A. Well, that is without my knowledge; I couldn't state that as a fact.

Q. You don't know about that, so that in this parity, whatever parity there is I presume would be between the
2774 European conference? A. More or less regular rates that prevail in that commodity.

Q. This cut would not guard you against competition offered by trans-shipment from Europe? A. It would not.

Q. No; the conference here does not undertake to do that? A. No.

Q. Now, when these rates are made, when a parity of rates with Europe is sought, does that take into consideration the point of origin in America and the rail rate to New York? A. Our prices, the basis on which we operate, are
2775 F. A. S. New York.

Q. Free alongside steamer, New York? A. All we have to take into consideration is the ocean transportation rate.

Q. Were you familiar with the time when this conference sought to equalize the rates to different shippers, based on the point of origin? A. No, I never knew anything about it.

Q. They don't do that now? A. I don't know anything about such operations.

Q. And you don't know how much of a rail haul is involved, how much the cost of the rail haul is to your Euro-
2776 pean competitors, do you? A. No.

Q. And the actual rate from the point of origin to the point of destination in the Far East, you would never know whether that was equal to the European through rate, or not, would you? A. No, our manufacturers all quote F. A. S., New York.

Q. These goods that you ship, you say you ship a good deal of steel products? A. Yes.

Q. Where do they originate? A. At various points; Youngstown, Ohio, Pittsburg, and various other points.

Q. What other points? A. Ramapo Iron Works, at Hillburn, N. Y.; Hillburn, N. Y., and—where is the Lorraine Steel Company's plant? Lorraine, Ohio? 2777

Q. Do you ship any from the Birmingham district? A. No, we never have.

Q. And where do the cotton piece goods originate? A. Oh, they originate in Southern mills, from the South; nearly all of our shipments come from the Southern States.

Q. Around Atlanta, Georgia? A. Yes.

Q. And Augusta? A. As a matter of fact, in many cases the purchase is made here in New York, from commission houses, piece goods houses; we don't bother about the origin of goods. 2778

Q. Yes, but in a general way you know where they come from? A. We know they come from the South or New England.

Q. That amounts to quite a volume of business, does it, that Southern mill cotton piece goods? A. Well, at the present time the volume is very light; China is not buying from this country, at the present time, in any great quantity.

Q. Where are they buying? A. Why, the Japanese have taken up the brown goods that we used to ship from this country, and are doing very well in them, and England. 2779

Q. And England, you say? A. Yes, the English goods; and in print goods, of course Germany.

Q. Then there isn't any advantage in the rate that enables you to compete with England, is there? A. From here?

Q. Yes. A. It is a question of goods in that case, more largely than it is a question of rates, in that particular instance.

Q. Well, you wouldn't say that it was impossible that the rate from England might be more favorable and you might give the advantage? A. No. 2780

Q. It is quite likely true, isn't it, that they have an advantage? A. Very likely true, yes.

Q. Have you ever investigated it at all? A. No.

Q. This Tientsin service that you speak of was not a promise to shippers generally to make that port at regular intervals; it was only a promise to you that they would go when you had certain tonnage, is that right? A. The matter was taken up as far back as 1909, to determine the advisability of having regular service to Taku. The tonnage

2781 was not sufficient, and then a basis was made of a certain rate over the port of call rate for 250 tons or upwards, for which amount a ship would proceed to Taku Bar.

Q. And the rate named? A. The rate would be the port of call rate, plus a certain extra, 2 and 6 pence, or 5 shillings extra for proceeding to Tientsin.

Q. You don't remember how much that was? A. I think it was originally made 5 shillings, and afterwards has been reduced on steel products, &c., to 2 and 6 over the port of call rate.

Q. What is the port of call rate, do you remember? A.
2782 The port of call rate now depends, the basis of general cargo rate is 40 shillings, I think.

Q. 40 shillings? A. Yes.

Q. So that originally it was about 12½ per cent. additional charge? A. Yes.

Q. What is the distance, do you remember, from the ports of call? A. It is 400 or 500 miles.

Q. 400 or 500 miles? A. More than that, I guess; those distances in China get away from me, unless I have a map before me.

2783 Q. Upwards of 400 or 500 miles? A. Yes.

Q. You would not say, would you, under the conference system competitors always get the same rate? A. No, I would not make such a broad statement as that.

Q. I mean competitors from this country now? A. At the present time?

Q. During the period of this conference, for instance, has it been true that competitors have all paid the same rate on the same class of goods? A. As far as my knowledge extends, yes.

Q. Regardless of the quantity shipped? A. Yes.

2784 Q. You don't obtain concessions, ever, for quantity shipments? A. Not that our competitors could not obtain on the same basis.

Q. Well, suppose your competitors have the same quantity? A. As far as my experience goes they get the same rate.

Q. Whether they have the same quantity or not? A. Yes.

Q. How about supplying cargo when the steamer is particularly in need of cargo and you are able to offer a large quantity of certain kinds of cargo, like steel; aren't you

sometimes able to get a concession in the rate? A. I never have; I have never had a sufficient quantity of steel to follow that up, of course, but I have had quantities of steel that were much smaller and know that I have paid the same rate that the steel company did, by the same ship, for a much larger quantity. 2785

Q. In your experience in the South African business, did you find that some shippers obtained a better rate than others, under the conference system? A. During the running of the conference there, I never knew of an instance; we shipped by various lines, the Union Castle or Bucknalls, and the rates were the same by either. 2786

Q. Well, I was not speaking of the different rates by the different lines; I was speaking of different rates to different shippers? A. As far as my experience went, and exact knowledge, rates were the same.

Q. You didn't know about that; well, now, if you could get a forward contract with a single line that was able to give you the sailings, you would be just as well off as you would by shipping by the conference lines, wouldn't you, as a shipper? A. If you could get equivalent service, and everything, in every respect assured, you would be just as well off at similar rates. 2787

Q. And you would be substantially as well off, even if you had to go to more than one line and make a contract, wouldn't you? Make a contract for half the sailings by one line and half by another; that could be done, couldn't it? A. It could be done; it would not be as satisfactory as making it through one channel.

Q. No, but it would be, after all, not a very difficult thing to do, would it? A. Not if the service were assured.

Q. Now, you say that insurance rates are lowered by the conference lines, because they are in conference? A. No, I didn't say that. 2788

Q. Well, I don't know that I recall exactly what you did say about that; what was it? A. I said that newer, better, faster ships, ships making better speed, a shorter voyage, a better class of ship than the ordinary tramp that one will pick up on charter, will give you a better rate, regular fixed rate of insurance to operate on, than shipping by any chartered tramp that happened to come along.

Q. Suppose the same steamer is operated independently,

2789 by an independent line, not as a tramp, but as an independent line, and that line subsequently joined the conference, would that result in any better rate of insurance being given on that steamer? A. No.

Q. So that after all it depends upon the character of the steamer? A. The character of the steamer.

Q. And the management of the line, rather than upon any combination that they may be in? A. It is the rating at Lloyds.

Q. And Lloyds ratings are fair, are they not? A. Yes.

Q. On the steamers? A. Yes.

2790 Q. If you were able to get a contract ahead with a certain line, or with more than one line in competition, that would enable you to quote a landed price, wouldn't it, just the same as though you made it by the conference lines? A. There would always be the open question, in figuring on that, of the stability of the service offering the rates; that would determine which way you would figure.

Q. Has the speed of the steamers in the Asiatic trade increased very greatly in the last few years? A. Yes, within the last year or so the type of steamer has improved quite considerably.

2791 Q. Within the last year or so? A. Yes.

Q. Before that, during the first few years of the conference, there wasn't any marked change in that regard? A. There has been a general, slow improvement in all the services in that regard, by the replacement of older steamers with a newer and better class.

Q. By all the services you mean by all the steamship services of the world? A. I think in general, yes.

Q. And that, whether they were in conference or not, is that right? A. Yes.

2792 Q. So that the increase in speed could hardly be attributed to the conference, could it? A. Steamers to be regularly employed, I suppose, can be built upon a higher basis than those that are being built for general distribution of charter, reletting, &c.

Q. I am not speaking of chartered steamers, I am speaking of the question of whether steamers in a conference would necessarily be speedier than steamers built to be run by an independent line? A. You are speaking entirely of an independent line in some particular trade?

Q. Any trade. A. A regular line would undoubtedly maintain its standards as high as regular lines in a conference. 2793

Q. Yes. A. In that regard there is the speed premium paid by conferences, to be taken into consideration.

Q. You mean the speed premium provided in the agreements? A. In the pool.

Q. In the pool, yes; you say that the speed of steamers generally throughout the world has increased within the last few years, is that right? A. I think it has, yes.

Q. How about the size of steamers, are they increasing in size or not? A. Well, in general, yes; trans-Atlantic service, decidedly. 2794

Q. Well, how about other services? A. Well, the size of steamers in the trade to the East has increased quite materially; some of them are considerably larger than boats we had on the run four or five or six years ago.

Q. You are familiar with the pooling agreement in this case? A. To a certain extent, not wholly.

Q. You know that the pooling agreement places a limitation upon the size of a vessel that can be used in this traffic? A. I do.

2795

ROBERT H. BLAKE, a witness called on behalf of the defendants, being duly sworn, testified as follows:

DIRECT EXAMINATION by Mr. C. C. Burlingham:

Q. You are the Secretary and Treasurer of the American Asiatic Steamship Company? A. Yes, sir.

Q. And you attend the conferences? A. Yes.

Q. As a representative of that line? A. Yes.

Q. And take part in the fixing of rates? A. Yes.

Q. And are familiar with the rates from this country to the Far East? A. I am not as familiar as I sometimes would like to be, but I try to keep myself familiar with them. 2796

Q. Mr. Sparks, when on the stand, produced a tariff of freight rates and arbitraries as of March 1, 1912, Petitioner's Exhibit 36, page 591 of Volume 2 of Exhibits, and also produced a typewritten statement of rates to Aden, Singapore, Manila, China and Japan ports as of December 15, 1913, Petitioner's Exhibit 37, page 623 of the same volume. I observe in Exhibit 36, pages 598 and 599, dated December 15, 1913, general cargo, which I assume is the same as general

2797 merchandise, the rates are to Aden 35 shillings, Singapore 42 shillings 6 pence, Manila $10.50, Japan and China, 42 shillings, 6 pence. Are those the correct rates? A. To the best of my belief they are.

Q. Isn't it a fact, as one of the witnesses, I think Mr. Burns himself, has said, that a large proportion of the commodities shipped from here to the Far East is covered by the term "General merchandise"? A. A large proportion, yes.

Q. What proportion should you say, roughly? A. Aside from steel products and case oil, I should say at least 50
2798 per cent.

Q. And during the period of the existence of the conference, what has been the rate on general merchandise? A. Since when?

Q. Since the conference was formed, in 1905, as far as you can recollect? A. So far as I recollect, the lowest rate on general merchandise has been 32 shillings and 6 pence.

Q. To where? A. To China and Japan ports of call.

Q. And the highest? A. The highest has been 42 and 6.

Q. Well, I think it was Mr. Briggs, who said that so far as Manila cargo was concerned it had ranged from $9 to $12;
2799 is that correct? A. I don't recollect it ever having been as high as $12; $10.50 is as high as it has ever been, to the best of my recollection.

Q. In that whole period? A. Yes; since the beginning of the conference, that is. I think it was considerably higher than that before the conference was formed, from time to time.

Q. And the conference dates from April 13, 1905, does it not? A. 1905.

Q. Have you been connected with the company since then?
2800 A. Some little longer than that.

Q. How much longer? A. About a year.

Q. Had the American Asiatic Steamship Company been a member of any conference before April 13, 1905? A. No.

Q. That was the date of your joining the conference, was it? A. That was the date the conference was formed. There were some preliminary arrangements, some little prior to that; I don't remember just how long.

Q. I see. What are the rates on general merchandise to-day, by the conference lines? A. The rate to Aden on

general merchandise is 35 shillings; to Singapore 40 shillings, to Hong Kong, Kobe and Yokohama, or I might say to China and Japan ports of call other than Shanghai, 40 shillings. 2801

Q. To Shanghai? A. To Shanghai, 42s. 6d.

Q. To Manila? A. $10.

Q. Then they have gone off 50 cents a ton on Manila cargo? A. Yes.

Q. And 2s. 6d. on China and Japan ports other than Shanghai? A. Yes.

Q. And 2s. 6d. on Singapore cargo? A. Yes.

Q. Will you please explain this increase in the rate to Aden in Exhibit 37, December 15th, 1913, over the rate under the tariff of March 1, 1912, Exhibit 36? A. Well, the quantity of cargo obtainable for Aden is usually very small, and it is only every now and then that a steamer calls there. As a rule, it has been found that the call at Aden doesn't pay, and the rate was so much less than that to other ports that it seemed entirely equitable to make it 35 shillings. 2802

Q. And it was so made by your conference here? A. Yes. The reason why the rate to Shanghai was not reduced in the same way as to the other ports is because at Shanghai, a port in China, what is called the grand chop has to be paid. 2803

It is a considerable sum paid to the Chinese Government, and naturally means that the expenses of a steamer calling there are increased by that much. All the European lines, I believe, charge more to Shanghai than to other ports.

Q. In the course of your business, do you at times ascertain the rates of freight from European ports to the Far East? A. Whenever we possibly can. We have tried to, time and time again, and it is very difficult to do so, because their rates are apt to be variable to a certain extent, and especially unless they know that the inquiry comes from some merchant who really has goods to ship, they are apt to be inaccurate, unreliable. 2804

Q. When you have to deal with a real shipment by a real merchant here, does the question of rates from Europe come up sometimes? A. Quite frequently, and it is for that reason largely that we try to get the rates from Europe; and when in doubt we try to arrange to have our rates on the safe side, as we want to bring the business to this country, naturally.

2805 Q. Do you cable the other side, or do the merchants do it? A. We cable, if necessary; if there is time we write.

Q. In that way have you yourself ascertained the rates, say during the last year or two, at different times? A. The only specific instance I think of at the moment was a rate on locomotives to a port in China, I think Shanghai, some port of call, and we got a packing list showing the exact size and weights of the different packages comprising this shipment of locomotives, and we finally, after some difficulty, obtained a quotation.

Q. From Europe, you mean? A. From Europe.

2806 Q. What part of Europe? A. From either England or the Continent,—Hamburg, London, Liverpool; the rates were the same from each. They would not quote a rate on heavy lifts; that, they said, had to be a matter of arrangement; but we got a fairly good idea of it, and the rates proved to be somewhat higher than ours.

Q. Did you make that shipment? A. We have not as yet; that is only a short time ago.

Q. There is an extra charge, if I remember, in some of these tariffs for extra lifts, isn't there? A. Over 6000 pounds, single pieces.

2807 Q. You have spoken several times of certain ports as ports of call; what is a port of call? A. Ports which steamers make regularly, every trip.

Q. Those are, in China and Japan, what ports? A. Hong Kong and Shanghai in China; Kobe and Yokohama in Japan, although Moji is almost a port of call.

Q. What do you call the other ports? A. Why, outports.

Q. Does that, in plain language, mean out of the way ports, or off the line ports? A. Yes, that is a literal translation.

2808 Q. During your experience in the trade,—which runs over how many years? A. Eleven.

Q. (Continuing) Has there been an increase in the trade with the outports in China? A. Very much so.

Q. And has that increase taken place during the period of the conference? A. It has.

Q. What do you say as to the regularity of sailings now by the conference lines, compared with what it was when you went into the business eleven years ago? A. Well, prior to the beginning of the operations as a conference, neces-

sarily the sailings were more or less irregular, because there 2809
was no collaboration between the various lines, they had no arrangements; none knew when the others were going to dispatch a steamer, and so each sent out a steamer when they could get a cargo, whenever that was. After the conference was formed, attempts were made to start a regular service almost immediately; it probably was somewhat irregular for perhaps two years, I think not longer than that, since when it has been pretty regular. It has varied somewhat in the intervals between steamers at different seasons of the year when less cargo was moving, but a pre-arranged 2810
schedule has been maintained pretty regularly ever since then.

Q. And ten years ago or so, before the conference arrangement was made, was there a distribution of ports, or did the steamers in competition cover the same ports? A. Well, they took cargo to whatever port they could get it.

Q. And did they sail direct to certain ports, or did they cover a number of ports? A. They usually covered a considerable number of ports; their sole idea, almost, was to try to come out square.

Q. With the distribution of ports, which I understand 2811
exists now, does it not? A. Yes.

Q. (Continuing) Is the service from this country to the ports more direct, speedy and frequent? A. Very much so. Our first port of call on the China run is Hong Kong, whereas prior to any conference arrangements, a steamer might stop at Aden, Singapore, Penang or any other ports for which they could get cargo, before going to Hong Kong.

Q. When you say might stop, what do you mean by that, that they did do it? A. If there were cargo obtainable,—I don't remember, of course, the individual schedules of steamers loading before then, but if a steamer could get 2812
cargo for Singapore, as she might very likely, she would stop there before going to Hong Kong.

Q. In your experience has that happened? Not the particular steamer, but do you remember the fact that they did that? A. Yes, there was no distribution of runs, even.

Q. Are you familiar with the freight rates on domestics, and have you been for the last few years? A. Well, of course, I have been familiar with the rates from here; I presume you mean from European ports as well.

2813 Q. I mean from here first; you are familiar with them from here? A. Yes.

Q. Have you had occasion to ascertain the rates from England at times? A. Yes, we have.

Q. I think the last witness said something about the difference in the goods; will you explain that, if you know about it? A. Well, there are certain set grades of cotton piece goods which are exported from this country, and there are other grades, usually of a higher quality, which are exported from English mills. Just why that necessarily is, I don't know, but it is probably a custom or habit, I presume,
2814 although I have been told that the climate and atmosphere in England enables them to put a much better finish on certain grades of goods than is possible here; they can weave them the same way, but the result is not the same for some reason. At any rate, the result is that the domestics we ship from here are comparatively of low grade; the high grade goods go from England.

Q. They are cheaper, then, from England? A. Our goods are cheaper.

Q. Have the British merchants developed trade in certain parts of the East, and the American in certain others, or in
2815 the same parts? A. In the same localities; Shanghai is the piece goods center for China.

Q. You have explained the difference in the material itself, what about the freight rates? A. I don't think I could give you an exact figure, but my understanding is that the rates from Europe are some little higher than ours.

Q. On those goods? A. Yes, something like 15 to 20 shillings.

Q. Theirs are? A. Yes.

Q. According to Petitioner's Exhibit 37, the rate on cotton
2816 piece goods in bales to China and Japan is 60 cents per hundred pounds; is that the rate now? A. The rate now is 50 cents.

Q. Per hundred pounds? A. Yes.

Q. As I understand you, you do not recollect, or you don't know exactly, what the rate is now from England? A. No, I don't.

Q. But in the past you have at times ascertained it? A. Yes.

Q. And your recollection is that it is— A. (Interrupting) Considerably higher.

Q. Theirs is considerably higher than ours? A. Yes. 2817

Q. What is your experience as to the shipments, exports and imports, overland? A. Well, that is one of our greatest difficulties.

Q. To and from the Pacific Coast? A. There is more cargo imported into this country from the Far East by the Pacific than there is by our lines; there is no question about that. Even to this part of the country, certain commodities.

Q. Such as? A. Hemp, mainly; hemp has been imported overland in very large quantities by hemp rope manufacturers right here in New England. All sorts of light cargo, Chinese and Japanese merchandise, mattings, fire-crackers, 2818 bamboo ware, these straw hats and rattan furniture, cassia, spices, they all come that way.

Q. How do you meet that competition? A. Some of it we cannot meet.

Q. Why not? A. Well, because if we quoted a rate that would get the business for our lines, it would be really ridiculous; there would be an absolute loss, a very serious one.

Q. To carry? A. To carry, because we have to consider space, whereas the railroads do not. I don't know how they arrange their matters, but they are only concerned with the 2819 weight. They vary their rates somewhat by the comparative measurement of the goods, I presume, but we have got to have a boat somewhere near full and down on an average; we cannot take all light cargo and have the boat floating about 17 feet light of her marks. That is the principal reason, and the question of time, of course, is a vital one in many cases.

Q. On those commodities in which you do compete with them—and there are some, of course? A. There are.

Q. (Continuing) Are your rates as high as theirs? A. 2820 No; if they were, we would not get it.

Q. This morning Mr. Montgomery asked some of the witnesses questions which suggested that it was only very valuable cargo that came overland; is that your experience? A. Not only valuable cargo.

Q. I suppose he had in mind silks, and that sort of thing? A. Of course silks come overland; they come, as a rule, by so-called silk trains, which are rushed specially through; but this other cargo—well, hemp for example or China matting

2821 or rattan furniture or any of these other commodities I mention, are not valuable by any means.

Q. But in olden times, not so very remote, matting came in sailing vessels in great quantities here, didn't it? A. Yes; it still comes in considerable quantities by Suez, by our lines.

Q. You don't carry silk very much, do you? A. We don't carry silk at all.

Q. Has your experience covered periods of active competition between the lines themselves? A. Well, about a year of it, and amongst the four original lines there was some competition when the American Manchurian line came in.

2822 Q. What was your year's experience—with this line? A. Yes.

Q. When you were breaking in? A. Yes.

Q. What year was that? A. 1904; a little before and a little after, perhaps.

Q. And what was the condition of things then? A. Well, the condition of things was very chaotic. We had some bookings at a very low rate, and I presume all the other lines did. We tried to get together enough cargo to make it worth while to charter a boat, we didn't own boats of our

2823 own. Very often we couldn't do it, and we would re-let the other cargo to some of the other lines who had a boat anyway, and usually had to take a loss on it, of course. But the business was very much smaller than it is now, so many boats could not have been dispatched in any case. I think during that year we had perhaps four or five outbound boats, at irregular intervals, and all of them very unsatisfactory from every point of view.

Q. And how about the homeward voyages? A. Well, it was about the same thing.

Q. You speak of its being unsatisfactory, but I suppose

2824 you mean from the point of view of the ship owner and the line? A. Not in this instance the ship owner, because we had to charter the boats; the ship owner got his charter money.

Q. I don't mean that, I mean the managers of the ship? A. Yes. Not only that, but the shippers, too. I can say that they had no particular liking for it.

MR. MONTGOMERY: I want to object to that as incompetent, irrelevant and immaterial, and hearsay, as to what the shippers thought.

Q. At that time, how close was your relation to Shewan, Tomes & Company? A. Well, practically the same as it is now. 2825

Q. They were the owners of a majority of the stock? A. A majority, yes.

Q. Of the American Asiatic Steamship Company? A. Yes.

Q. Can you say from their point of view, as merchants and exporters and importers, whether the conditions then existing were satisfactory and advantageous to them? A. They were not.

MR. MONTGOMERY: Objected to, and I ask to have it stricken out as being a conclusion of the witness. 2826

Q. Were freights stable then or were they fluctuating? A. They were continually fluctuating, day by day.

Q. Were those fluctuations slight or large? A. Well, they were quite serious fluctuations, sometimes.

Q. Since the establishment of the conference, there have been changes in rates, I suppose, from time to time? A. Yes.

Q. May we take this item of general merchandise as typical of the whole tariff? A. I think so.

MR. MONTGOMERY: That is objected to as incompetent, irrelevant and immaterial; the tariffs speak for themselves. 2827

Q. Your boats are all chartered boats, are they? A. We now have an arrangement with certain ship owners to supply us with steamers when required; it amounts to the same thing, in effect.

Q. You have the first call on their steamers? A. Yes.

Q. Of course, you are aware that in 1911 and 1912 there was a very great increase in the rates of chartering? A. Yes.

Q. All over the world? A. Yes.

Q. Did the conference lines put up their rates in proportion? A. They did not. Some rates were advanced slightly during that time, but there was no really material advance. 2828

Q. Charter rates have now fallen very materially, have they? A. They have.

Q. And what are these reductions in rate of yours due to; what is the reason for them? A. Primarily, a general falling off in the market for tonnage the world over, the general falling in freight rates all over, and beyond that the necessity, on account of competition, both overland and from

2829 Europe. For instance, one of the most valuable cargoes that we get, in a way, are hogsheads of tobacco, which have been moving in quite large quantities for some years past.

Q. Where from? A. From New York to Shanghai. Several months ago we found we were getting none, and upon inquiry as nearly as we can ascertain they have been moving from Baltimore by the North German Lloyd, via Europe.

Q. To Bremen? A. Yes, trans-shipped in Europe by the Far Eastern Service of the North German Lloyd; and our largest shipper of domestics have been shipping their
2830 domestics in the same way.

Q. Do you object to stating who that is? A. China & Japan Trading Company. I cannot be sure they are shipping them in just the same way, but they are shipping them via Europe; we are not getting them, have not been.

Q. Have you reduced your rates on those two articles? A. We have reduced our rates on domestics, as I have just pointed out, recently.

Q. From 60 cents? A. 60 cents to 50 cents.

Q. For the hogsheads of tobacco, shall I refer to leaf tobacco? A. Yes, leaf tobacco.

2831 Q. $1.10 per hundred pounds, December 15th, 1913, Exhibit 37, page 625, and the same in March, 1912; has that been reduced now? A. In May last it was reduced to $1 per hundred pounds, and the rate now, taken on the last few shipments, has been 80 cents per hundred pounds, and that rate will remain in force.

Q. Have you got any of the business back? A. Well, we are living in hopes of getting it back.

Q. The point of my inquiry is whether there are checks on your power to fix rates, by competition? A. Well, the
2832 two examples I have just given you would seem to be fairly effectual checks, because both tobacco in hogsheads and domestics are very valuable cargo, and supply one of the largest elements of light cargo which we have, and which we must have in order to combine with our heavy steel.

Q. What do you say as to the influence of the general charter market on the freight rates of the conference lines, either actual or potential? A. Well, in both ways they affect us to some extent. Actually, for example, the Steel Company would not hesitate to charter a boat if they could

charter one at a rate less than the rate they can obtain from 2833
us. They have done so many times. We carry large quantities of lubricating oil for the Standard Oil Company, and the Standard Oil Company is continually chartering steamers to carry their case oil. In their case oil charters they have the option of shipping a certain proportion of lubricating oil at the same rate. If our rates are not less than the charter rates, they will not give us the lubricating oil, but they will fill up their proportion which is allowed in their case oil charters, and ship it on their chartered boats. That is one way it actually affects us, of course,
aside from the fact that on some big shipments, some big 2834
plant that is being put up, or a lot of railroad material which always forms a good nucleus for an individual firm to charter a steamer or in conjunction with other firms, they may always do that.

Q. You think that is practicable? A. I don't know why not.

Q. For a combination of merchants? A. Why not?

Q. Have you ever seen it done? A. Well, it has been done many times before the formation of the conference.

Q. How about the U. S. & Australasia Steamship Com-
pany, do you know anything about that, what the constituent 2835
parts of that company were originally? A. Well, I have heard; I don't actually know.

Q. Well, don't you know the interests that made it up? A. Arkell & Douglas.

MR. MONTGOMERY: Is that in this traffic?

MR. BURLINGHAM: No, that is the Australian

MR. MONTGOMERY: That is objected to as incompetent, irrelevant and immaterial, and as not having any bearing on this traffic.

2836

Q. All right, go on. A. Henry W. Peabody & Company, Mailler & Querau.

Q. And some other firms? A. Yes.

Q. All merchants, weren't they? A. All merchants.

Q. Now, you have spoken of the actual competition of chartered boats? A. Yes

Q. What about the potential competition which you spoke of also? A. If there is any decided fall in the freight market of the world, it has perhaps an intangible effect. Every one

2837 who ships goods or has any connection with export or import trade knows it, feels it, directly or indirectly; a very large proportion of the commodities dealt with in the world trade can be obtained almost always from several sources, from several different countries; in fact, about the only exceptions are strictly native products, or some patented article. But there are comparatively few manufactures or products of this country that cannot be obtained from somewhere else in the world, and if our rates here were higher than the general trend of rates all over, they would be purchased of some other country. It would be only a short time before
2838 the effect would be felt; tenders and quotations and bids are sent out by our merchants and manufacturers and by the merchants and manufacturers of other countries, and very soon the business of this country would be falling away.

Q. Would be falling away? A. Yes, would fall away.

Q. If the rates were excessive? A. If the rates were higher than those from other countries.

Q. You spoke of the period of severe competition, when you were yourself the competing line? A. Yes.

Q. Did the Bucknalls subsequently come in in the same way, or the Nortons? A. Not in exactly the same way.

2839 Q. What was the date of their incursion? A. I think their activities first started early in 1907, if I am not mistaken; some time in 1907.

Q. Was that the time when the famous building up of Dalny, to which Mr. Montgomery refers so often, began? A. Well, I guess it must have been; I never heard that Dalny has been built up particularly, it is very rarely a steamer calls there or offers any cargo, but I gather that must be the time. I think there was some unusual activity in the way of railroad building at that time, and there were
2840 a lot of steel products, manufactures of steel, sent out there at that time, and no doubt the Steel Company were very instrumental, if not entirely so, in inaugurating this new service.

Q. And was that the beginning of the activities of the Bucknalls and the American Manchurian Line? A. Yes.

Q. Were they in competition with the Conference Lines then? A. They were.

Q. What was the effect on rates? A. Well, I don't know that there was any great effect at the time, because it didn't last very long.

Q. I see, they got in after a very little struggle, is that so? A. Very little struggle, yes. They had a foundation of steel products for each of their boats, and they only wanted a little something more to fill them up. 2841

Q. The question was raised this afternoon, while Mr. Burns was on the stand, as to the right of Shewan, Tomes & Company to charter boats, or other firms which are agents of lines in the East; is there any difficulty about that? A. So far as I know there is no restriction upon an agent of a line in that connection.

Q. There is a provision in the agreements here in suit, in regard to chartering, as I recall? A. Yes, as I recall it the principals in the conference cannot put in a chartered steamer, unless special consent is obtained of all the other members. 2842

Q. But that doesn't apply to agents the world over? A. No, I am quite sure the agents would not give up their rights in that connection for their agency commission.

CROSS EXAMINATION by Mr. Montgomery:

Q. I understand, Mr. Blake, that you do consider that the agents have the right to charter steamers and sail them in competition with their principals? A. My understanding of it is that if the agents of some of these lines here wish to charter a steamer, for their own products primarily, that they could do so. You are speaking, of course, of the agents who are also merchants. 2843

Q. I call your attention to this paragraph in the agreement known as Eastward Agreement, Exhibit 1 of the petition, paragraph 9 on page 29 of the petition as amended: "That where it is considered advisable to book cargo for account of the Associated Lines, which through lack of accommodation on the regular steamers might otherwise fall into the hands of competitors, such cargo shall be taken care of by chartering additional tonnage, the result to be divided in proper proportion between the various interests, and the loading commission credited to the Agents *pro rata* to the share in the trade which each of the signatories hold, based on their respective number of sailings. 2844

"All questions connected with the bookings of such additional cargo and the chartering of tonnage shall be governed by a two-thirds majority vote of the New York Agents, based

2845 on their principals' respective number of allotted sailings. Each service to charter and load such extra tonnage in turn." Now, don't you construe that paragraph as precluding the agents from chartering boats not to be pooled? A. When you asked me about chartering, I had more in mind the agents in the East, that is commission firms who are agents there. It had not occurred to me that you were considering any of the New York agents doing it.

Q. How about the New York agents? You would construe that paragraph as precluding the New York agents from doing that, wouldn't you? A. Yes; the New York agents,
2846 as a matter of fact are not merchants.

Q. Well, Shewan, Tomes & Company are. A. Well, yes; with that exception.

Q. And wouldn't you consider that the general spirit of the pooling agreement would preclude the same thing in the homeward business? A. In general, yes. But for example, in the Philippines, some of the agents of the Conference Lines are large shippers of hemp. If they can charter a steamer to take their hemp at a rate cheaper than that allowed by the Conference, I feel pretty certain they would do so.

2847 Q. You don't know of their having done it? A. I know of their having discussed it.

Q. You don't know of their having done it? A. No.

Q. These rates, you say, were raised somewhat owing to the charter rates having advanced some time ago? A. Yes.

Q. That is to say, they were raised in 1912, weren't they, January 1st, 1912, about that? A. Yes, some of the rates were raised somewhat then, I think.

Q. And again in 1913? A. I don't remember any general increase then; some commodity rates may have been altered.

2848 Q. This Exhibit 37, I see, is dated December 15, 1913, last December, and that embodies an increase on general cargo rates to some ports? A. To Aden only, does it not?

Q. Aden only; I see automobiles were raised from $8.25, as per the tariff of March 1, 1912, Exhibit 36, to $8.75, as per Exhibit 37?

MR. CHARLES BURLINGHAM: What was the date of the $8.75?

MR. MONTGOMERY: December 15, 1913.

MR. MACLAY: Where are these automobiles going,

MR. MONTGOMERY: All the ports. 2849

MR. MACLAY: What, the same rate to all the ports?

MR. MONTGOMERY: Yes.

Q. What is the reason, if these rates are based on the charter rates, why there would not be a horizontal raise in rates all along the line? A. They are not based entirely on charter rates. I thought I explained it, as fully as I could before. There are a number of questions, including all of our various competitors, the charter rates of the world, and the rates from European or competing countries, which have a bearing on it.

Q. Do you charter each ship separately, or do you have a general charter rate that you pay? A. Do we individually? 2850

Q. Yes? A. We do not.

Q. You have a general contract for steamers ahead? A. Yes.

Q. At what rate? A. At no fixed rate.

Q. Well, what determines the rate that you pay? A. Why, it amounts to a profit sharing basis, or a loss sharing basis, as the case may be.

Q. What owners do you charter from? A. We have an arrangement with the Indra line, and with the Ellerman and Bucknall line; when they have no steamers available we sometimes have a steamer of one of the other lines. 2851

Q. Have you written arrangements with the Indra line and with Ellerman and Bucknall? A. Not at present, no.

Q. When have you had? A. Why, we did have one with the Indra line originally; that has been superseded.

Q. By another written arrangement? A. No.

Q. By a verbal arrangement? A. Yes.

Q. And what are the terms of that? A. Well, they are sort of lengthy to go into. As I say, the point of it, the principle of it is, they share in the results. 2852

Q. So that they share the profits and the losses? A. Yes.

Q. In what proportion? A. I would rather not say.

Q. You have testified here that your charter rates have a great bearing on the rates that you make? A. Yes.

Q. I want to be entirely fair with you, Mr. Blake, but it seems to me that the arrangement under which you charter is very pertinent to that question. A. Our arrangement has nothing whatever to do with the rates charged. It is a

2853 private arrangement solely between ourselves and the owners, and the rates charged are the rates fixed by the Conference Lines and charged by all the conference members, who themselves are not necessarily familiar or affected in any way by our private arrangements with these owners.

Q. I show you a paper which I think you have produced, upon which the first item appears to be, "General cargo rates as per present tariff," &c.; that you produced, did you, Mr. Blake? A. Yes.

MR. MONTGOMERY: I ask to have that marked for
2854 identification.

Marked Petitioner's Exhibit No. 40 for Identification.

THE WITNESS: I would like to say that there are, I believe, a few commodity rates which have been altered since this was published, and which alterations do not appear on that.

Q. And when was that? A. They have been made from time to time.

Q. I mean, when was this made? A. This was made last May.

2855 Q. I notice that the rates on steel products are the same upon this Petitioner's Exhibit 40 for Identification as they were by the tariff of December, 1913; can you state whether since May the rates on steel have been lowered? A. What are the rates appearing there?

Q. The rates on steel rails, I mean; they appear to be 17 shillings 6 pence to all ports by both tariffs? A. If I am not mistaken, they have been recently reduced to 16s. 3d. to Japan ports.

Q. Why is that? A. Owing to the competition of the
2856 Rickmers Line from Europe.

Q. But there have been no general reductions to China or Manila ports? A. A number of other steel commodities.

Q. On rails? A. No.

Q. Well, I want to ask you in detail about the steel products on this tariff, because you say the rates may have been changed; but generally speaking how do the rates on steel products at the present time compare with the rates as per the tariff of December 15, 1913? A. Had I known I was going to testify to-day I would have looked these matters

up. There are a number of steel products, commodities shipped by the Steel Company, which have been reduced to 16s. 3d. 2857

Q. To all ports? A. To Japan ports, and in some cases to Hong Kong, owing to the Rickmers competition from Europe. I remember nails, for one other, and there were several others, I believe, which had previously paid a considerably higher rate.

Q. But in the absence of that particular competition, there has not been any reduction in the steel rates? A. You mean beyond the reductions made on account of this competition there has been none? 2858

Q. Yes, and to the other ports they remain the same, to the ports which this competition does not reach? A. Yes.

Q. They would be the same to Manila? A. Yes.

Q. And to most of the China ports? A. Yes.

Q. Wouldn't they? A. Yes, the China ports are now included in these reductions.

Q. All of them? A. Hong Kong and Shanghai; Shanghai is a trifle higher than Hong Kong, because of the grand chop before referred to. 2859

Q. It is growing late, and I don't want to go over this in too much detail, but you wouldn't say, would you, generally speaking, that the rates had been materially lowered since the charter rates have dropped so markedly? A. Yes, they have been lowered decidedly.

Q. On all commodities? A. Perhaps not on all, but on a great many.

Q. Take automobiles for example; I notice they are higher than they were in 1912, and they are just what they were in December, 1913? A. Yes, all articles have not necessarily been reduced. That was already a low rate; these automobiles come from Detroit, they are shipped overland very largely, and they go on a weight rate. We had to make our rate low in the first place. Two articles in particular are cotton domestics and tobacco in hogsheads, to which I referred before, the alterations in which were made since that tariff was made up. A general cargo reduction of 2s. 6d. and 50 cents to Manila is quite an item. 2860

Q. But the rates on general merchandise, general cargo rates, for instance, appear to have dropped 50 cents to

2861 Manila and not at all to Shanghai? A. 2s. 6d. to all other ports of call.

Q. And 2 and 6 to all other ports; why is it that the rates to Shanghai have not dropped? A. Because of the grand chop, which has to be paid there to the Chinese Government, which is sort of a tax on a ship calling there; it doesn't apply to Hong Kong, because Hong Kong is a British port.

Q. Now about this Aden rate, you say that rate was made by the Conference? A. Yes.

Q. And who else? A. I don't understand just what you mean, and who else?

2862 Q. Isn't there an arrangement with other lines that go to Aden, by which you charge the same rates? A. I don't know whether you exclude the American Manchurian Line from the Conference.

Q. No, I am including them with the Conference Lines, for the purpose of this question; but aren't there other lines that go to Aden? A. There are trans-shipment lines; yes, there are the Indian Lines that go to Aden.

Q. And you have an arrangement with them, haven't you? A. We have some arrangement as to the quantity of cargo, at least so as not to have two boats on at the same time,

2863 but I don't know of any written arrangement as to rates. So far as I know, they charge the same rate as we do.

Q. And when this rate is changed, it must be changed by the two, I suppose? A. We don't consult with them in making these rates; we take more cargo than they do, and I imagine they charge the same rate.

Q. They fall in line with yours? A. Yes.

Q. When you write to Europe or cable for these rates, to whom do you cable? A. Well, as a rule, the agent here acting as mouthpiece for the time being, cables to the correspondents in England.

2864

Q. In England; and how do they know the rates? A. They try to ascertain them from the lines who operate the service in question.

Q. And where they are competitive, they cannot always get it? A. Well, they can usually get a nominal rate any way, pretty nearly the correct rate.

Q. That would be the tariff rate, probably, that they would be given? A. They might, of course, be able to obtain it indirectly, without exciting any suspicions.

Q. You say this shipment of hogsheads of tobacco was 2865
from Baltimore? A. Not only from Baltimore, I believe; I think the Tobacco Company frequently shipped by other European lines, possibly in some cases from New York as well.

Q. But you don't know of that? A. In discussing shipments with them, they stated that they shipped by a number of trans-Atlantic lines.

Q. That is a recent occurrence, isn't it? That has not been a common thing, it has not been done in the past, has it? A. They have shipped in the past.

Q. How long ago? A. Why, ever since we have been doing 2866
business, I guess; as far as I know, indefinitely. They have been shipping a certain proportion of their Shanghai shipments via the European lines, although we have been obtaining a fair proportion of them as well, but recently we have been getting none at all. That is what brought the question up.

Q. You don't know what rate they pay by the North German Lloyd? A. I don't know.

Q. Isn't it a fact that the North German Lloyd is in a rate war with the Hamburg-American? A. I don't know.

Q. Well, that has been commonly reported, hasn't it? A. 2867
Yes, it has been reported in the newspapers that they have overcome that difficulty, too; I don't know whether they have or not.

Q. Who is the shipper of this tobacco? A. The British American Tobacco Company.

Q. You say the Standard Oil Company and the Steel Company will charter vessels when they have to? A. Yes.

Q. That is, when the rates get very high, I suppose? A. Or when the charter rates get very low.

Q. Would you class the Standard Oil Company and the 2868
Steel Company as in the same position in regard to charters? A. Not exactly. The Standard Oil Company are continually chartering steamers, how many I have no idea, but a great many.

Q. Their business is peculiarly adaptable to charters, isn't it, on account of the way the cargo is stowed? A. They have such large quantities of a certain commodity to ship.

2869 Q. Yes, and it also stows in such a way as to fill the boat and bring it to its marks, doesn't it, pretty nearly? A. Well, it will seldom be full, but it would be much better than steel would.

Q. And steel would not be nearly so desirable an article to ship in a chartered boat, would it, unless other cargo could be gotten together? A. No, it would not be as desirable at equivalent rates.

Q. No; and there might be a situation in which the Standard Oil Company could charter, and which would not aid the Steel Company at all? A. Well, of course the Standard
2870 Oil Company do charter continually. It is the exception, not the rule, when we take a case oil contract; it is the rule for them to charter always.

Q. They have a commodity which is particularly adaptable to that? A. Yes.

Q. And they almost stand alone in that regard, don't they? A. In the capacity for chartering steamers, yes.

Q. Yes. A. Yes, they almost can make a market.

Q. Conditions would have to be somewhat peculiar to enable the Steel Company to charter to advantage, wouldn't they? A. They charter very often; they have their own
2871 regular printed charter party forms.

Q. But ordinarily speaking— A. (Interrupting) Ordinarily speaking, if their cargo to move over a given period is not greater than can be taken care of by the steamers of the regular lines, they don't charter.

Q. And when they do it is because, then, that the Conference Lines cannot give them the space they need at the times they need it? A. Usually that is the case.

Q. And outside of those two, there aren't any concerns that are able to charter boats for their own wants, are
2872 there? A. Well, there are none in particular that do charter for their own wants, from here to the Far East.

Q. Well, is there any one that is in a position to? A. Not individually that I know of.

Q. And isn't it rather an impractical thing, as a rule, for merchants to combine in this day and age to charter? A. It is purely a question of economy, it is a matter of dollars and cents.

Q. For instance, we had a witness here this morning who said that he would not want to have other people in with

him on a charter, because he would not want them to know of his business, as competitors? A. I didn't hear that. 2873

Q. Wouldn't that be generally so of merchants? A. I don't know how they would know their business; they might know the merchandise that was being shipped, but as to the prices or details of it, they wouldn't know anything about it.

Q. Well, it is not a common thing, any way, is it? A. Not a common thing, no.

Q. And if they did charter a ship, they would still be confronted with the problem of getting a cargo back, if it were a round trip charter? A. No. 2874

Q. Or else they would pay a rate that was perhaps based upon the ship coming back empty? A. There are almost regular rates for charter from this country to the Far East, the basis of them being the Standard Oil Company rates. You can charter a steamer any time from New York to Far Eastern ports, one way only.

Q. But the rate is high, isn't it? A. It is no higher; they can get a cargo back from there, they can have a cargo of beams or something from Manchuria perhaps, or go down in India and always get a cargo in the East Indies, somewhere. 2875

Q. But they would have to know where to get it, and have to hunt it up, wouldn't they? A. Of course, as a rule you wouldn't find it so convenient to charter a boat from some totally outside ship owner that knew nothing about this trade and had no interest in it.

Q. This charter that you speak of to Australia, when was that? A. I don't think I spoke of that; a charter to Australia?

Q. Well, where was it? Didn't you speak of a combination of merchants that chartered a ship somewhere; where was that? A. Mr. Burlingham asked me about the different firms interested in the United States & Australia Steamship Company, I think that is what you are talking of. 2876

Q. Oh, that is in the steamship company? A. Yes, the component parts of which are merchants; they charter steamers and run a line.

Q. But run it as a regular line? A. Yes.

Q. And they did that, I suppose, because they regarded the conference rates in that traffic as too high? A. Well, they are in the conference.

2877 Q. They are in the conference now? A. Yes.

Q. They have joined the conference? A. Yes.

Q. Are you sure about that? A. Well, I don't know that I could say that they have joined it; they were the originators of it, to the best of my knowledge.

Q. You don't know what the terms of the arrangement are? A. I know nothing about that.

Q. Whether they have pooling, or anything like that? A. I do not.

Q. At the time this Dalny business arose, you were asked to quote on those shipments, weren't you, before the Man-
2878 churian Line took them? A. I think not.

Q. You don't recall that? A. I do not recall our having been asked to quote on them.

Q. I don't mean you individually, I mean now the Conference; were not the Conference Lines offered those shipments if they could make an agreement? A. Agreement as a whole?

Q. Yes. A. I don't think so.

Q. Or any part of them? A. They may have had individual shipments offered to them at a rate which they did not accept offhand, I am not sure; the arrangements made
2879 as regards the Manchurian Line were made without any consultation or knowledge on the part of the other lines then operating services.

RE-DIRECT EXAMINATION by Mr. Maclay:

Q. The merchants in the Asiatic trade could start a line the same as this Australian Line, couldn't they? A. They could; it is quite possible for them to do so.

Q. But the reason they have not is that the Conference rates are more economical for them? A. They are satisfied
2880 with the service given them by the Conference Lines, and the Conference Lines can supply that service to better advantage and more economically and more regularly than a separate organization could.

MR. MONTGOMERY: I ask to have stricken out the conclusion of the witness as to whether the shippers are satisfied with the conference lines, or what their reasons may be for not starting another service.

Adjourned until Friday, July 10, 1914, at 9:30 A. M., to meet at Mr. Kirlin's house in Locust Valley, Long Island.

Locust Valley, N. Y., July 10, 1914, 9:30 A. M. 2881

Present—GILBERT H. MONTAGUE, Special Examiner.

APPEARANCES:

STANLEY D. MONTGOMERY, for the Petitioner.
SIMPSON, THACHER & BARTLETT, Solicitors for Defendants Barber & Co., Inc., and others;
J. PARKER KIRLIN,
M. W. MACLAY, Jr., of Counsel.

CONVERS & KIRLIN, Solicitors for Defendants Bucknall Steamship Lines, Ltd., and others; 2882
J. PARKER KIRLIN,
M. W. MACLAY, Jr., of Counsel.

HERBERT BARBER, recalled by the defendants.

DIRECT EXAMINATION by Mr. Kirlin:

Q. Mr. Barber, you are one of the defendants in the action, are you? A. I am.

Q. You have already been sworn? A. I have.

Q. I think you have been in the trade quite a long time? 2883
A. A good many years.

Q. Won't you tell us briefly the development of the trade up to the present conference? I speak especially with reference to the eastbound trade from New York to China and Japan? A. In 1885 Edward Perry was the only man who had a steamer occasionally on the berth loading general cargo for the Far East. My first experience was with a steamer that was chartered on joint account by Perry and my then firm; I was then a partner of Patton, Vickers & Co. The steamer made a profit, but I couldn't get my share, and I had to take the matter before the Complaint Committee 2884
and before the Managers of the Produce Exchange before Mr. Perry paid up.

Q. How long had he been in the trade? A. He had been a year or two; only about a year or two then he had been in.

Q. He was operating chartered steamers, wasn't he? A. Yes. In 1886 we loaded one of our own steamers for the Far East with general cargo, and from 1887 on until 1895 we occasionally loaded steamers. Perry continued loading steamers all through that time at irregular intervals.

2885 Barber & Co. commenced business in 1886; it is Barber & Co. that I refer to after that time, when I say "we."

In 1895 we began in earnest to load steamers regularly for Japan and China. In 1901 Messrs. Funch, Edye & Co. started a line of steamers, and for a while there were three of us loading, although Mr. Perry at this time had become a very infrequent loader. In 1902 the Philippine Trading Company started loading steamers for Manila, the Straits and China.

During all these years rates were continually up and down, sometimes they were as low as $4 a ton, and other
2886 times, when room was scarce, rates would be $6.50 and $7 a ton, and when no steamer was on the berth freight had to be shipped via Europe and pay $9 or $10 a ton.

In 1901 Messrs. Funch, Edye & Co. and ourselves had a conference arrangement by which we quoted similar rates and tried to avoid having our sailing dates clash. Rates at this time ranged about $7 to $8 per ton.

In 1903, the American Asiatic Company started loading steamers, and competition was very severe and rates for awhile went down as low as $2.50 per ton. During this time
2887 we tried to avoid loading any steamers at all, just making a bluff at having steamers, trying to make the other man take the freight at the low rate. Shippers would try to get all they could off at the low rate, and then would have to pay higher rates to ship their stuff via Europe or via Pacific. This competition continued and was accentuated by the American and Oriental Line starting in 1904, but meanwhile the Philippine Trading Company petered out and had gone out of business.

Q. Perry had gone out by that time, hadn't he? A. I think Mr. Perry died in about 1902, but he had done very
2888 little business for a year or two before he died. The competition was paying nobody, and was very—

MR. MONTGOMERY: Just a minute, I ask to have stricken out that the competition was paying nobody, as not within the knowledge of the witness and a conclusion.

THE WITNESS: Then put it this way; the competition was a very losing game for the steamship people.

MR. MONTGOMERY: I ask to have that stricken out as not within the knowledge of this witness, except

possibly as to his own business, and even as to that I object as not being the best evidence. 2889

THE WITNESS: And as a way out of the difficulty, a conference was arranged in 1905, which embraced at first Funch, Edye & Co., the American Asiatic Company and ourselves.

MR. MONTGOMERY: I don't want to interrupt here, but I think the witness's recollection is not just right about that; I think he means 1904.

THE WITNESS: Oh, 1904 it probably is.

MR. MONTGOMERY: The first conference was; it might be confusing unless that is put in. 2890

THE WITNESS: Yes, I think it was in 1904, and the American and Oriental Line was taken into the conference in 1905, I think that was a year later. That is how it was, to get the thing in sequence, yes.

Q. Prior to this, you had been operating your own steamers, and also chartered steamers, had you? A. First we operated chartered steamers and steamers that were berthed by ship owners with us; then we had our own steamers that we owned, and steamers that were berthed with us, and chartered steamers. 2891

Q. And it was on the basis of returns received on those vessels that you make the statement that the business was not remunerative? A. That is so.

MR. MONTGOMERY: That is objected to as not the proper way to prove what the business was.

MR. KIRLIN: Well, we don't care about going into the details of how much they lost, or anything like that, but I think it is, in a general way, competent for him to say whether it was a losing or winning rate that they were getting. 2892

Q. Proceed with your answer, Mr. Barber? A. In 1905, the first attempt at pooling was made, and a pooling agreement was drawn up that embraced the four lines I have just mentioned for the east bound business.

Q. That is the pooling agreement that is in the record, is it? A. That pooling agreement is in the record in this case and has been amended since. In 1907 the American Manchurian Line started, and although the competition was

2893 not very severe it caused considerable unsettlement of rates, but in the early part of 1908 the Manchurian Line came into the conference, but did not come into the pool.

In 1904 a rebate system was introduced into the eastbound trade, by which we returned 10 per cent. of the freight at the end of six months, to those shippers who had confined their shipments via Suez Canal steamers to the conference lines.

Q. You are referring to Petitioner's Exhibit No. 1? A. Yes; this rebate system ceased in 1910 and has not been renewed.

2894 Q. So that the present arrangements were a matter of evolution growing out of the development of the business and the regulation of it? A. Certainly, the business grew from 1885, when there was about a steamer in every two months, until now, when we have three steamers a month.

Q. How did the sailing prior to 1904 during competition, compare in number and regularity with the sailings after the conference was established?

MR. MONTGOMERY: That is objected to as incompetent, irrelevant and immaterial.

2895 THE WITNESS: There were about the same number of sailings, but the departures were very irregular. In the busy times, or sometimes, there were very many more sailings than others. We had to meet the trade as it came along, and you will notice, just the same as you have got here, Exhibit No. 39. In 1905 there were twenty-five ships, in 1906 there were thirty-five, in 1907 forty-two and in 1908 thirty-three.

Q. In 1904, during the competitive period, about what would they be? A. There were about twenty-four sailings

2896 then, I think.

MR. MONTGOMERY: Just a moment. I don't want to be objecting, but if you give the sailings for 1904, that would not be during the competitive period, really, because 1904 was a conference year.

MR. KIRLIN: July, 1904.

MR. MONTGOMERY: Beginning July, anyway.

Q. Yes; I am speaking, and suppose you intend to speak, of the period immediately preceding the Conference? A. Immediately preceding the Conference, yes.

Q. Well, now, the Government has indicated in a number 2897
of questions that they do not think you maintain regular departures now; what is the fact about that? A. Well, I think they will find that we dispatch four steamers a month now; that is, the Conference Lines dispatch two steamers for the Philippine route, say on the 10th and 25th of the month, and two steamers for the China run on the 5th and 20th of the month.

Q. I notice that those seem to divide on each side of the 15th of the month? A. Yes.

Q. What is the reason for that? A. Well, it is simply that we want to fix intervals between the steamers, and we don't 2898
want to have two steamers going together if we can help it.

Q. Is there anything in the merchants' conditions that bears on that? A. They like to know somewhere about the dates that the ship is going to sail.

Q. Well, is there any practice among the merchants in selling, of reserving themselves a certain period for shipments?

MR. MONTGOMERY: That is objected to as not within the knowledge of the witness and hearsay.

Q. If you know, that is? A. Not so much in the China 2899
trade as there is in the European trade; they will sell for the month's shipments.

Q. In the China trade? A. Yes.

Q. In some trades, you testified, the first half and second half? A. The first ten days, and so on.

Q. So that whether or not you get your boats off on the actual day, you get them off with such regularity during the month as to satisfy contracts of that kind, do you, to enable the merchants to satisfy them? A. That is so, yes.

Q. Has the Conference had any effect on the type of vessels that operate? A. The size and the speed of the ships have 2900
increased considerably within the last ten years.

Q. You have read Mr. Dodwell's evidence, I take it? A. I have, yes.

Q. He mentioned the advantages that in his judgment have accrued to the shippers west bound; what do you say as to the applicability of his testimony in regard to eastbound service? A. The same thing applies.

MR. MONTGOMERY: I object to that as calling for a conclusion and being too general, and as incompe-

2901 tent, irrelevant and immaterial, and as not the proper way to prove what advantages, if any, there may be to the eastward business.

THE WITNESS: The boats run on 20-day intervals, not 15-day intervals. I want to correct the statement about the four steamers a month; it is three steamers a month; we run the steamers every twenty days.

MR. MONTGOMERY: On each run?

Q. Twenty-day intervals of departure? A. Yes. That is for each service; there are two services, a Philippine service
2902 and a China and Japan service, and we run each of them at 20-day intervals.

Q. That is 20-day intervals between steamers to the Philippines, and 20-day intervals between the steamers to China? A. Yes.

Q. And does the one Philippines come in between the two China ones, or they may both be at the same time, may they? A. There are two boats on the berth at the same time, always have the berths covered. We have steamers loading for China and Japan and steamers loading for the Philippines at the same time, always.

2903 Q. Mr. Barber, since you have had the Conference, have you had a tariff? A. We have a uniform tariff, the rates of which are quoted by all lines. We meet each week, every week, for revision of the tariff.

Q. The tariff is made here in New York, is it? A. Made in New York by the agents.

Q. And to what extent, if at all, are the merchants consulted with regard to the tariff, or do they consult you with regard to the tariff? A. There is hardly a week but what some item or the other comes up that wants changing, to meet some competition via the Pacific or via Europe, or the
2904 state of the market does not enable a man to get his orders through at the rate we are quoting.

Q. Who brings these necessary changes to your attention? A. The freight managers of each line.

MR. MONTGOMERY: I object to that as incompetent, irrelevant and immaterial.

Q. And as a practical matter, in course of business, how do they get to know that certain rates need reconsideration? A. The merchants make representations to the freight clerks

in the offices, and they come to their principals and repeat 2905
it, and when we meet on Tuesday these things are brought up and discussed.

Q. Who are the principal competitors of our merchants in the China trade and Philippines? A. Oh, the German merchants and the British merchants.

Q. They have a regular tariff? A. They have a regular tariff.

Q. On the other side? A. On the other side, and they have regular conferences and they have to compete with other rates the same as we have.

Q. What efforts, if any, do you make to give our merchants 2906
as good rates as the European merchants can get? A. All the time.

Q. Do you give them the same rates or lower rates? A. We endeavor to have our rates not higher, and, if necessary, give them the advantage; if possible, give them the advantage.

Q. Mr. Goodwin produced the tariff as current at the time of his examination on December 30, 1913, which was marked in evidence Petitioner's Exhibit 31; have there been changes made in the tariff since then? A. Oh, several; I might say many.

Q. Take the rates on steel products to port of call, on 2907
page 585 of the record, part of Exhibit 31; do you produce a paper showing the revisions in those rates? A. This is the one I would like to produce, as the steel rates now being quoted (producing paper).

Q. That shows reductions that have been made in the rate since the date of Mr. Goodwin's examination? A. It does.

MR. KIRLIN: I will offer that in evidence.
Marked Defendants' Exhibit No. 5.

Q. Mr. Barber, will you give us as briefly as you can the 2908
items which have been modified in the tariff produced by Mr. Goodwin and marked Petitioner's Exhibit 31? Give us the item and the date of the modification and the amount of the modification? A. A reduction was made on the—

Q. Give us the items first? A. Singapore, Hong Kong, Kobe and Yokohama, general cargo was reduced from 42 and 6 pence to 40 shillings.

Q. The date? A. Although Shanghai was kept at 42 and 6, no reduction to Shanghai. That reduction was made on the 24th of February.

2909 Q. 1914? A. 24th of February, 1914. The Manila rate was reduced from $10.50 to $10.

MR. MONTGOMERY: Is that 42 shillings and 6 pence, to 40 shillings, is that it?

THE WITNESS: Yes, it came down from 42 and 6 to 40 shillings.

Q. Except to Shanghai? A. Except to Shanghai; Shanghai was kept at 42 and 6. Automobiles have been reduced to $7 per ton.

Q. The date? A. On the same date, on the 24th of Feb-
2910 ruary, 1914.

Q. Go on. A. Crude asbestos was reduced on the 21st of April to 37 and 6 pence weight.

MR. MONTGOMERY: From what?

THE WITNESS: The rate before was 40 shillings. The most important item of reduction, perhaps I had better tell you, was on the cotton domestics, piece goods, of which on China steamers we sometimes have 2,000 tons in one steamer. The rate originally stood at 60 cents per 100 pounds. It has been reduced first
2911 to 55 cents, and on the 12th of May we reduced it to 50 cents per 100 pounds, in consequence of the competition by way of Europe and by way of the Pacific.

The rate on tobacco in hogsheads, of which we get a large quantity to ship, was leaf tobacco $1 per 100 pounds; competition by way of Bremen and Baltimore, Baltimore to Bremen thence to Shanghai, has reduced that freight to 80 cents per 100 pounds; and that is a very large item, as sometimes we get five and six hundred hogsheads of tobacco in one steamer.

The rate on plaster has been reduced from 40 shil-
2912 lings to 37 and 6 pence; this was reduced on the 5th of May.

Q. Did you mention hemp? A. The hemp rate is on the west bound. Hemp has been reduced from—I haven't the exact figure, but there was a reduction made last week of 5 cents per 100 pounds in the rate on hemp from Manila to New York, or Boston.

Q. Is that a large product? A. A very large product. The rate on sugar from Manila to New York, Philadelphia or Boston has been reduced from 30 shillings, first it was

reduced to 27 and 6 pence, then to 26 and 3 pence, and it 2913
was reduced last month to 25 shillings.

Q. Let us keep to Mr. Goodwin's list for the present, and I will ask you about the other later. What other modifications are there in Goodwin's list, Petitioner's Exhibit 31? A. We might take it as a general thing that most of the rates whenever competition has come up since the 1st of January this year, have been reduced.

Q. Were there any other items that you want to refer to specially? We won't want to be too tedious about this, just get the principal ones. A. The lard rate from Singapore is an important thing. 2914

MR. MONTGOMERY: I ask to have the previous answer stricken out as too general; it seems to me that the items ought to be named specifically.

THE WITNESS: There has been no instance, I think, this year where the rates have been advanced; that is one thing.

Q. What has been the tendency of the general market? A. Down.

Q. Since December, and even before December, 1913? A. Yes. 2915

MR. MONTGOMERY: Well, you mean—

MR. KIRLIN: In the market for tonnage all over the world.

MR. MONTGOMERY: That is the charter market?

MR. KIRLIN: Yes, and also the berth market.

Q. Is that true of both, Mr. Barber? A. Yes, rates are lower.

MR. MONTGOMERY: Since when?

Q. When did they begin to drop? A. About a year ago. 2916

Q. And about how much have they gone down in that time? A. Why, the values here, I think, have gone down 30 per cent.

Q. Now, give us the remainder of what you intended to say about the lard? A. The lard rate from Singapore was 57 and 6 pence weight, that was reduced on the 28th of June to 45 shillings.

Q. Mr. Barber, I wish you would state what, if any advantages the Conference system as at present established in

2917 the China trade affords to ship owners? A. The ship owner is assured a more regular rate of freight for his steamer, and he is much more willing to commit himself to put on regular sailings, than if—

MR. MONTGOMERY: Wait a minute now; I ask that that be stricken out as not responsive. The question was what advantages accrue to the ship owner, not what altruistic frame of mind the ship owner is brought to by the Conference system, or what he may feel disposed to do; and if the purpose of the question
2918 was what the answer indicates, I certainly want to object to the question; I did not so understand it.

THE WITNESS: The advantage the ship owner gets from this Conference is that he is assured of a more regular tariff rate, and i[illegible]erefore, more willing to put his ships on the l[illegible]d keep up a regular service.

MR. MONTGOMERY [illegible]ve that stricken out as not responsiv[illegible] [illegible]oluntary self-serving declaration.

2919 Q. What are the advantages, if any, which the Conference affords to merchants?

MR. MONTGOMERY: I object to that as calling for a conclusion of the witness, and as incompetent, irrelevant and immaterial, and as being obviously not within the knowledge of the witness.

THE WITNESS: That affords the merchant a regular rate of freight so that he can make his contracts ahead for shipment, that he could not possibly do if there was open competition and no Conference.

MR. MONTGOMERY: I ask to have that stricken out
2920 as being a particularly flagrant conclusion of the witness about something speculative, as to what might be possible or impossible. He obviously cannot know anything about it.

Q. Has the Conference had any effect in the development of the port facilities of the different lines, their capacity to handle cargo and receive cargo in advance of actual dispatch of vessels? A. It has.

Q. In what way? A. We can unitedly make representa-

tions to the authorities to get certain improvements made, 2921
and they will then attend to them; but they would not if an individual ship owner simply came and complained.

Q. Has each of the lines its own pier? A. In New York they have, yes.

Q. And how large, in a general way, are the facilities that are put at the disposal of shippers for the receipt of cargo at the piers in advance of shipment?

MR. MONTGOMERY: I object to that as incompetent, irrelevant and immaterial, what advantages the individual ship owners give.

THE WITNESS: Each line has a dock from 800 to 2922
1,200 feet long, and 80 feet to 120 feet wide, and we are open to receive cargo at all times.

Q. Do you receive cargo, even though there may be no ship on the berth, whenever merchants tender it? A. We do, so as to enable him to get freight off car service or railway charges, which he would incur if he had no place to put it.

MR. MONTGOMERY: I ask to have that stricken out as absolutely incompetent, irrelevant and immaterial.

Q. To what extent, if at all, has the trade to China and 2923
Japan increased since in the beginning of the Conference? A. Oh, it has increased all ways five fold, but not always increased by way of Suez. It has increased by way of the Pacific, and also by transshipments via Europe.

Q. How do your ships compare in size now with the ships that were in use prior to the Conference? A. They are about 50 per cent. larger steamers.

Q. Do they get fairly full cargoes outward bound? A. As a rule, we get the ship either full or down to her marks, with room.

Q. Was it any part of the object of this Conference, since 2924
you have been a member of it, to restrain the trade or commerce of this country?

MR. MONTGOMERY: Objected to as calling for a conclusion of law, and as incompetent, irrelevant and immaterial.

THE WITNESS: No.

Q. What is your real object as a ship owner, a member of the Conference?

2952 MR. MONTGOMERY: Objected to as incompetent, irrelevant and immaterial, and calling for a conclusion.

Q. What is the object that you have in view in carrying forward your service under Conference arrangements? A. To conduct a remunerative business for ourselves.

Q. And would that be done by any operation intended to restrain commerce? A. No.

MR. MONTGOMERY: Objected to as calling for a conclusion, and as incompetent, irrelevant and immaterial.

2926 THE WITNESS: It would not.

Q. Has the Conference, so far as you are aware, damaged the interests of the American shippers in any way, since it has been in force?

MR. MONTGOMERY: Objected to as calling for a conclusion and as incompetent, irrelevant and immaterial, and an entirely improper question.

THE WITNESS: In no way.

2927 Q. Has it helped them, in your judgment?

MR. MONTGOMERY: Objected to, same objection.

THE WITNESS: It has.

Q. Have you had any complaints of oppression or monopoly from shippers in connection with the Conference?

MR. MONTGOMERY: I object to that as incompetent, irrelevant and immaterial.

THE WITNESS: I have not.

Q. Do you know of any complaint having been made
2928 against this Conference prior to the institution of this suit by shippers? A. I do not.

MR. MONTGOMERY: I object to that as incompetent, irrelevant and immaterial.

Q. What proportion of the total tonnage of cargo that moves from this country to the Philippines, China and Japan is carried by the Conference Lines?

MR. MONTGOMERY: I object to that as incompetent, 2929
irrelevant and immaterial, and as not the best evidence.

THE WITNESS: I should say about 40 per cent.

Q. What are the products that are carried by vessels outside the Conference, and from what ports do they go? A. Large quantities of steel, phosphate, cotton and case oil are shipped by full cargo steamers from the ports of New York, Philadelphia, Savannah, Tampa and Galveston.

Q. How do the number of ships carrying those four products compare with the number that you dispatch per annum, 2930
in tonnage?

MR. MONTGOMERY: That is objected to.

THE WITNESS: I think that there is fully 40 or 50 per cent. of the—

MR. MONTGOMERY: I ask to have stricken out what the witness thinks, if he doesn't know anything about it, is is obviously improper for him to guess.

Q. Do you keep track of these things in the course of your business? A. We keep in a general way a record of what goes on, and there are as many steamers sailing from New 2931
York with full cargoes as we dispatch with our general cargoes.

Q. And in addition are these others that go from the other ports that you have mentioned? A. Yes.

Q. With the products that go from those ports? A. Yes.

Q. Of course, you have competition by the Pacific as well? A. We have. The bulk of the cotton crop goes by way of the Pacific. Not more than 10 per cent. of the cotton crop goes by Suez. I mean, the cotton shipments to Japan, not the cotton crop, but the cotton shipments to Japan.

2932

MR. MONTGOMERY: Do you mean cotton, or cotton piece goods?

THE WITNESS: Cotton, the raw cotton.

Q. How do the rates that you have charged compare in a general way with similar products carried coastwise in the United States on United States vessels?

MR. MONTGOMERY: I object to that as incompetent, irrelevant and immaterial.

2933 THE WITNESS: Our rates from New York to China and Japan are, in some instances, lower than the rates that are charged from New York to Galveston and New Orleans.

Q. On the same products? A. On the same products.

Q. What is the distance to Chinese ports, Shanghai, say? A. Oh, roughly speaking, 12,000 miles.

Q. What is your whole distance, the longest distance that the lines cover? A. Roughly speaking, it is about 12,000 miles to either China or Japan, direct, via Suez.

2934 Q. Mr. Barber, complaint is made of pooling in this trade; what have you to say as to the advantages or disadvantages of pooling as affecting the merchant's interests? A. Where their interests are pooled there is no active competition of the individual agents to get special lines of cargo for his own steamer; he is then willing to—

MR. MONTGOMERY: Do you want him to speculate about what somebody is willing to do?

MR. KIRLIN: No, I don't want him to speculate.

MR. MONTGOMERY: Or to state the mind of some one?

2935 THE WITNESS: I am in the pool, I ought to know how the pooling affects us.

MR. MONTGOMERY: I ask to have it stricken out as obviously a conclusion.

THE WITNESS: He is then willing to advise the merchant as to the best steamer by which to ship his freight, whereas, if there is no pool each individual agent would try to get the best cargo he could for his own ship, irrespective of whether it suited the merchant, or not.

2936 Q. And leave the lower class of goods for the other ships? A. Yes.

Q. And how about ports served? A. Where we pool our earnings, we don't mind going to an inconvenient port or an expensive port, even for a small lot of cargo; whereas, when we are not pooled we would avoid all those ports and let the other people take them.

Q. How about the shipment of undesirable cargo? A. Well, we each take our share of it now.

Q. It makes no difference which carries it? A. No, not 2937
with the pool business.

Q. Has there been any development since the formation of the Conference, of the direct services to other Atlantic ports besides New York, westbound? A. Both westbound and eastbound; the westbound ships now call at Boston at least once a month, sometimes twice a month, and whenever cargo offers from Savannah or even Pensacola, we arrange to send ships down there to take care of it.

MR. MONTGOMERY: What ports are those?

THE WITNESS: Savannah and Pensacola, or Galves- 2938
ton.

Q. Do you also load rails at Baltimore? A. Occasionally we go to Baltimore for rails.

Q. That is eastbound? A. Eastbound, yes.

Q. Complaint is made about the tariff charged in the Far East on cargoes coming this way; having in mind the manner in which the business is done, does that add anything to the burden on the goods, as far as the American consumer is concerned?

MR. MONTGOMERY: Objected to as calling for a 2939
conclusion, and incompetent, irrelevant and immaterial.

THE WITNESS: It does not.

Q. Explain why not? A. Because almost the whole of the cargoes we bring from China and Japan to eastern parts of the United States are sold on a cost, freight and insurance basis; the buyer in this country has nothing to do with the rate of freight. The shipper or merchant in the east is the man who makes the freight rate, and takes the profit or loss on it.

2904

Q. What freight does the seller take into account in fixing his c. i. f. price, to his American customer?

MR. MONTGOMERY: Objected to as calling for a conclusion, and as incompetent, irrelevant and immaterial.

THE WITNESS: He takes the net rate.

Q. To what extent does the tramp tonnage influence your freight rates eastbound, which you fix here? A. We always

2941 have to take into account the liability of competition from the tramp steamer; when tramp steamers are cheap, our rates have to go down also.

Q. If they didn't, the tramps would be on your backs at once, would they not?

MR. MONTGOMERY: I object to that as leading and calling for a conclusion.

THE WITNESS: They would.

Q. You have spoken of modifications that have been made in the tariffs introduced in evidence since the times the
2942 tariffs were put in, so far as concerns the eastbound trade, and you have mentioned one or two instances of reductions in the westbound tariffs that were produced by Mr. Dodwell; what has been the tendency with regard to change, and if so, which way, in the westbound tariffs, since Mr. Dodwell was examined on May 15, 1913? A. The tendency has been entirely downward. The copper rate from Japan has been reduced from 20 shillings to 16 and 3 pence. The wood oil rate from Shanghai has come down from 37 and 6 to 30 shillings. I have already told you the rates from the Philippines, where sugar has gone down from 30 shillings
2943 to 25, and the hemp rate has been reduced two or three times during the last six months.

Q. You have given all that you recall? A. All that I recall, yes.

Q. But with regard to the westward rates, in the last year, has the tendency been upward or downward? A. Downwards.

Q. As bearing on the question of the reasonableness of the rates, will you state approximately the cost and top limit of the returns which your own shipping property has made to
2944 you since the Conference went into effect? A. The shipping engaged in the China trade, you mean?

Q. In the China trade.

MR. MONTGOMERY: I object to that as incompetent, irrelevant and immaterial, and not the best evidence of the reasonableness of the rates nor of the earnings of the line. The figures themselves and the books would have to be produced.

MR. KIRLIN: I am not after the exact figures; I simply want a general indication.

MR. MONTGOMERY: Well, even that, it strikes me, 2945
is highly improper to prove in this way.

THE WITNESS: Our shipping property in the China trade has not, since the steamers were built—they were built especially for the business—they will not average more than six per cent. per annum after allowing depreciation. For three years we could pay no dividend at all, and it is only the earnings that were made in 1912 and 1913 that brought us up to anything like a reasonable return for our money.

Q. I think you said when you were first examined that 2946
you thought Gallatly, Hankey & Co. was a limited corporation; have you informed yourself since then as to the correctness of that, on page 40 of the record? A. They are not incorporated.

Q. They are co-partners? A. It is simply a co-partnership.

Cross-examination of the witness Barber deferred, to be taken up during the time of the Petitioner to put in rebuttal testimony.

Adjourned to 2.15 P. M., to meet at 27 William Street, 2947
New York City.

2948

2949 New York, July 10, 1914, 2.15 P. M.,
27 William Street, New York City.

Met pursuant to adjournment.

Present—GILBERT H. MONTAGUE, Special Examiner.

APPEARANCES:

STANLEY D. MONTGOMERY, for the Petitioner.
BURLINGHAM, MONTGOMERY & BEECHER, Solicitors for Defendant, Howard Houlder & Partners, Ltd., and others;
2950 CHARLES C. BURLINGHAM,
CHARLES BURLINGHAM, of Counsel.
SIMPSON, THACHER & BARTLETT, Solicitors for Defendants, Barber & Co., Inc., and others;
M. W. MACLAY, Jr., of Counsel.
CONVERS & KIRLIN, Solicitors for Defendants, Bucknall Steamship Lines, Ltd., and others;
M. W. MACLAY, Jr., of Counsel.

ARTHUR O. PROBST, a witness called on behalf of the defendants, being duly sworn, testified as follows:

2951 DIRECT EXAMINATION by Mr. C. C. Burlingham:

Q. What is your business? A. Export.

Q. What firm? A. A. O. Probst & Company.

Q. How long have you been in the export business? A. Well, I have been in the export businesss for thirty-two years, but not in this particular line for that time.

Q. And the firm is how old? A. Well, this particular firm is since 1897, but I succeeded to another firm of which I was manager before.

Q. And what was that? A. Gabain & Company of Chi-
2952 cago. I was originally of Chicago, that is where I originally came from; in 1882 they were established.

Q. And you remained in Chicago until 1897? A. No, 1901.

Q. But you had a branch house here from 1892 to 1897? A. No, not until 1901.

Q. Where is your firm's office? A. 66 Beaver Street, New York, and Royal Insurance Building, Chicago.

Q. Which is your principal office? A. It is hard to tell; I am the senior partner, and I am living here.

Q. What is the nature of your export business now? A. 2953
Well, the Chicago office is entirely independent of the exporting to the Orient; they only do businesss to Europe, but the office here does business to Europe and to China.

Q. And what class of goods do you export to China? A. Cotton goods entirely, exclusively.

Q. What is known as domestics? A. Domestics, yes.

Q. Are they shipped in bales? A. Bales, and there are also cotton flannels, that are shipped in cases.

Q. To what ports in the East do you sship, principally? A. Shanghai only.

Q. How long have you been engaged in that trade? A. 2954
Since March, 1901.

Q. You have been in New York since that time, have you? A. Yes.

Q. How extensive is your business, if I may ask? A. Why, it varies. In good times we ship 40,000 bales, and in poor times we ship 10,000 to 15,000 bales a year; it varies very considerably.

Q. How do you ship to Shanghai? A. There are two ways of shipping; one is via Suez, direct steamer from New York via Suez, and the other way is overland via Pacific, either through United States ports or Canadian ports. 2955

Q. Using our transcontinental railways or the Canadian Pacific? A. Or the Canadian Pacific, Vancouver.

Q. What is the proportion that you send across the continent and via Suez, roughly? A. Well, we ship 70 to 80 per cent. via the Pacific, overland.

Q. Are you familiar with the rates of freight on cotton goods from European ports to China? A. Yes, sir.

Q. Do you keep yourself acquainted with those? A. Yes.

Q. For what purpose? A. Well, on account of calculations for cabling offers. 2956

Q. Have you any competitors in Europe? A. Well, we compete on certain lines of goods with the English manufacturers.

Q. They manufacture, as I understand it, a somewhat different article, do they? A. Not entirely; only along certain lines. Certain lines are quite different, and certain lines are somewhat similar.

Q. And in those similar lines, you say, you have to meet their competition? A. We have to meet their competition.

2957 Q. Have you had experience with the Suez Lines, not only during periods when conference agreements were in existence, but also when there was active competition between the steamships?

MR. MONTGOMERY: If you know.

Q. Have you had that experience? A. During my experience, to the best of my recollection, there have been conferences; there has been no active competition.

Q. Do you remember when the American Asiatic Line came into being, I think it was in 1904, 1903 or 1904? A. I
2958 have a faint recollection, but could not say positively.

Q. And I think the American Manchurian Line—I don't know whether you use them—came in in 1907? A. Yes, we use all the lines.

Q. You use all those Conference Lines? A. Yes.

Q. What do you say as to the character of the rates on the particular articles that you are principally interested in, during the last six or eight years, since 1905, we will say?

MR. MONTGOMERY: Objected to as incompetent, irrelevant and immaterial, as calling for a conclusion
2959 of the witness, not based upon any standard.

THE WITNESS: I would say competition has made them normal and reasonable.

Q. What competition? A. From the overland routes.

Q. Do you consider that a real competition? A. Absolutely, without any question.

Q. How about the stability of rates during this period?

MR. MONTGOMERY: I want to object to that as incompetent, irrelevant and immaterial, and as not the best evidence; the rates themselves would be the best
2960 evidence of the stability of the rates.

THE WITNESS: They have varied less to what we call the far East, covered by these Conference Lines, than they have to European ports; they have been more stable.

Q. Do you ship to European ports? A. Yes, very largely, but not this commodity; other commodities.

Q. What sort of commodities? A. Why, principally what we call feeds and corn products, such as glucose and starch,

and all feeds connected with what is known as corn products. 2961

Q. During the last eight or nine years has there been any improvement or deterioration in respect of regularity of sailings? A. None at all.

Q. What do you say as to the sailings? A. They have averaged, to the best of my recollection, about two sailings a month.

Q. And how as to regularity? A. As regularly as could be expected.

Q. Have you any complaint on that score to make? A. No.

Q. Have you been able to make forward contracts? A. 2962 Yes.

Q. And do you make them? A. Yes.

Q. Give me an example of the sort of transaction you refer to with the Far East, with Shanghai?

MR. MONTGOMERY: That is objected to as incompetent, irrelevant and immaterial; the contract itself would be the best evidence of its terms.

THE WITNESS: Why, the cotton goods business to the Far East runs over several months' shipments, equal quantities, and I have experienced no trouble 2963 in making contracts for six months ahead, monthly shipments of equal quantities covering a period of six months from date of contract.

Q. Are you able to carry out those contracts by means of the Conference Lines? A. Yes, without any difficulty.

Q. Have you been doing that for several years now? A. Yes.

Q. How are sales made of cotton goods to the East, c. i. f.? A. C. i. f., yes; I handle it on a commission.

Q. And are the orders placed with you from the East, or from here? A. I don't quite understand. 2964

Q. Perhaps it is my ignorance. A. I mean to say, I will get an inquiry from Shanghai for certain goods; I will get the price from here and cable it.

Q. And that price is the c. i. f. price? A. The c. i. f. price, based on the cost, freight and insurance.

Q. Then is the freight an important or essential feature in the matter? A. Yes.

Q. And if the rate of freight by the steamers was exorbitant and unreasonable, would it interfere with your sales?

2965 MR. MONTGOMERY: That is objected to as incompetent, irrelevant and immaterial, calling for a conclusion of the witness and not based upon any state of facts shown by the record to be different from that which now exists.

THE WITNESS: No.

Q. Why not? A. Because I would ship overland via Pacific.

Q. You have that means open to you at all times? A. It is a matter of calculation, the difference between the freights
2966 and the interest calculated on what is involved. I have many orders giving me the option, it is a matter of calculation.

Q. And you have the Canadian road as well as the United States roads to deal with in the matter? A. Yes.

Q. Are any shipments of cotton piece goods sent to Europe and transshipped there to the East? A. No, not to my knowledge; there may be, but not to my knowledge.

Q. Your experience with the Eastern trade is practically confined to cotton piece goods, isn't it? A. Yes, altogether.

CROSS EXAMINATION by Mr. Montgomery:

2967 Q. Where do these goods that you sell in the Orient originate, Mr. Probst? A. A large majority originate in the Southern States of South Carolina, North Carolina, Virginia and Georgia.

Q. When you ship via Suez, from what ports do they go? A. Why, to the best of my knowledge, all of them are shipped to Norfolk by rail.

Q. Shipped to Norfolk by rail? A. And from Norfolk they come up by the Old Dominion Line or some other steamship line to New York.

Q. And then are transshipped again by these Conference
2968 Lines? A. Yes.

Q. To the Far East? A. Yes.

Q. Do the Conference Lines ever stop at Norfolk and take this cargo? A. No. May I explain the nature of the—

Q. Just answer the question first, and then explain. A. No, they never do.

Q. We will waive the explanation until later, Mr. Probst. So that New York is the only port; all goods must come to New York before they go to the Orient via the Suez Canal? A. Yes.

Q. In your line, I meant? A. Yes. 2969

Q. What controls the question of whether you ship via Suez or via the Pacific transcontinental route? A. I could hardly say, because many orders I get are for as quick shipment as possible, and then they must go by the Pacific.

Q. Regardless of the rate? A. Regardless of the rate.

Q. And that is where the purchaser needs the goods? A. Quickly.

Q. As a rush order? A. Rush order.

Q. And that is at times more important to him than the rate, is that it? A. Oh, about a month or two months out of the twelve; not often. Well, occasionally it is, yes. 2970

Q. But when it does occur, that is the reason? A. That is the reason.

Q. It is more important than the rate? A. Occasionally, about two months out of the twelve.

Q. And what is the difference in time? A. Anywhere from thirty to forty-five days.

Q. Difference? A. Yes. It depends whether the steamers go to Shanghai or call at Manila.

Q. And roughly speaking, what is the difference in the rate of freight? A. The rate of freight via Suez is always cheaper than via the Pacific, but you must figure in the difference in 2971 interest on the money at six per cent., which is charged in China, between the time of shipment and the time of arrival; and if you figure thirty days, at six per cent., that is equal to the value of one half per cent. on the goods.

Q. But the rates themselves, what is the present rate on the goods that you ship by Suez? A. To the best of my recollection it is fifty cents a hundred.

Q. Fifty cents a hundred, and how long has that been the rate? A. About two or three months; it was 55 before.

Q. It was 55, and became 50 cents? A. Yes. 2972

Q. Are the rates to the Orient quoted the same way, that is 55 cents per hundred pounds? A. Yes.

Q. And the rates to the Orient via the Pacific are quoted the same way, are they? A. No, they are quoted per hundred pounds. The rate via Pacific from any port in the South to-day is $1.25 per hundred pounds, less a rebate—I don't know whether you can follow me on this—less a rebate given by the mill of what it would cost the mill to ship the goods from there immediately to New York.

2973 Q. Less the rebate given by the mill? A. The rebate. Excuse me one minute, rates on cotton goods are always based on a New York price. I can buy goods to-day, supposedly, at six cents a yard at New York; that is the price. If I take them at the mill in South Carolina and ship them via the Pacific, the mill allows me what the freight would be to ship from that South Carolina point to New York. It is a little complicated.

Q. In other words, you pay a rate of freight and get part of it back from the mill? A. That is, overland.

Q. Yes; you would actually pay $1.10 to the railroad?
2974 A. $1.15.

Q. One dollar fifteen cents to the railroad? A. Yes.

Q. And you would have returned to you, what? A. The rate that it would cost from the South Carolina point to ship to New York.

Q. To New York? A. Which averages on what we buy, say 45 cents a hundred.

Q. Forty-five cents a hundred? A. Which would leave—45 from $1.15 would leave 70 cents a hundred freight.

Q. And how is that 45 cents a hundred made up? A. It
2975 is deducted from the invoice.

Q. No, you don't understand the question; that is, for instance, from I believe you said South Carolina— A. I took that as an instance.

Q. And that would be the rate from the mills in South Carolina, for example, to the port of Norfolk? A. No, to New York.

Q. But by rail to Norfolk and then by water to New York? A. Yes.

Q. And how much of that 45 cents would the rail rate to Norfolk be? A. I don't know.

2976 Q. You don't know about that? A. No, I don't know anything about it.

Q. Do you know whether they come through on a through rate? A. Oh, yes, I understand so.

Q. So that a large part of that difference would disappear if the Suez lines would take the goods at Norfolk instead of taking them at New York, wouldn't it? A. I don't know.

Q. Let me see if I understand you; if you buy these goods at the mill and ship them to Shanghai, you pay the railroads $1.15, if you ship via the Pacific? A. Yes.

Q. And of that amount the mills discount the purchase price 45 cents per hundred pounds because of the cost of bringing the goods to New York, is that right? A. Well, they don't have to pay the freight. 2977

Q. They don't have to pay it? A. No, they don't discount it; they simply don't have to pay it.

Q. What do you mean, they don't have to pay it? A. Well, they don't have the transportation from the mill to New York.

Q. Yes, but they do have to pay $1.15 to the railroads? A. No, we pay that.

Q. That is, you have to pay that? A. Yes. 2978

Q. And for taking delivery at the mill, they discount your bill 45 cents a hundred weight, is that right? A. Yes, which they would have to pay.

Q. If they were to carry them to New York? A. Exactly, that is right.

Q. In other words, it costs 45 cents to get the goods to New York to start them to the Orient that way? A. Yes.

Q. You don't know how much of that is taken up in the rail haul to the port of Norfolk? A. I don't know, no.

Q. But a part of that 45 cents at least is what goes to the Old Dominion Line for bringing them up from Norfolk here, isn't it? A. Presumably, yes. 2979

Q. So that you do know, don't you, that if the Conference Lines were to take the goods at Norfolk, stop and take them there, you would make a saving of that Old Dominion Line haul, wouldn't you? A. No, they would have to charge that much more to go to Norfolk to take them there. I would not be saving by it, it would cost them a great deal more. They would have to send their steamers to Norfolk and get them there.

Q. You know about the cost of sending steamers to Norfolk, do you? A. No, I don't know; I am not in that business, but it would cost them a great deal more than the Old Dominion Line could take them for. 2980

Q. Don't some of these steamers go to Norfolk anyway and take coal, sometimes? A. No, not what we call the package freight steamers, that take package freight; only cargo boats do that.

Q. And you ship entirely by package freight steamers? A. Absolutely, altogether.

2981 Q. And you are sure that none of them stop at Norfolk for coal? A. No, I am not; I don't know about that.

Q. You don't know about that? A. No.

Q. You sometimes ship your goods via Europe, don't you, and transship them over there? A. Never, never have.

Q. You never have shipped that way? A. No.

Q. Well, why is that? A. Because it costs more. I tried it, we got the figures, it cost more.

Q. In what way? A. You have got to pay the freight over to Liverpool or Hamburg or Antwerp, where the ports of transshipment are, and they pay the freight out again,
2982 and there are several handlings of the goods, which doesn't do them any good.

Q. What do you mean by not doing them any good? A. Well, every time you handle any goods, whether it is fruit or whether cotton goods, the package doesn't look any the better for it.

Q. And I suppose more or less breakage occurs even in careful handling? A. Yes, using these hooks, and breaking them.

Q. So that numerous handlings are to be avoided? A. Oh, yes, very much so, very much.

2983 Q. Of course, if you could take these goods at Norfolk, that would be another saving there, wouldn't it, it would save that handling; it would be a good thing, wouldn't it? A. Yes, I would not object if they did it.

Q. Well, you said you did try this European business once? A. Oh, I never shipped that way, but I got the rate, and the freight rate, many times.

Q. And they were higher? A. Always higher.

Q. And then there is the transshipment besides? A. Transshipment besides.

2984 Q. And do you know whether or not they are higher at the present time? A. I don't know; I have not inquired for the last year or so, personally.

Q. You don't know, do you, that some shippers of cotton goods to the Orient have used the European transshipment recently, in spite of the objections to it, in preference to the Conference Lines? A. Not to my knowledge; I would be very much surprised to hear it. I don't know it.

Q. Well, I don't know it, but it has been suggested in the record that the China & Japan Trading Company used that method? A. You would have to ask them; I don't know.

Q. Are they competitors of yours? A. They are friendly competitors. Oh, yes, they are competitors, yes; certainly they are competitors, they are the biggest people in the business. 2985

Q. Your shipments do not need to be any more frequent than one a month, do they? A. Yes, there is no rule on that.

Q. But what I mean is, the orders that you get from over there are for what kinds of delivery? A. Well, they are generally monthly; they are occasionally, we get them, first half month and second half month occasionally.

Q. That is very rarely, isn't it? A. Yes, mostly one a month. 2986

Q. Once a month would do very nicely, wouldn't it? A. July shipment, August shipment, September shipment.

Q. And that would do very nicely, wouldn't it? A. Yes.

Q. What I mean by doing nicely, is a service of one steamer a month would satisfy your needs there? A. Oh, no, no.

Q. Wouldn't it? A. It would part of the time, but two sailings a month suit us a great deal better. We often get orders divided up, the first half and the second half. It isn't always possible to get it. It is mostly possible, not always, but that is preferable. 2987

Q. Aren't some of these cotton goods manufactured at other points than in the south? Aren't some of them made in Massachusetts? A. Yes, but less and less every year. Ten or twenty years ago a large part was made.

Q. Well, how about the rates from there to the Orient? A. The same thing applies, except the overland difference is not as big; it costs less to bring them to New York than it does from South Carolina, and the New England business is very small. 2988

Q. This Pacific shipment involves an extra handling, too, doesn't it? A. Much less handling.

Q. Less than the Suez route? A. Oh, much less.

Q. That is, if they are taken at the mill? A. Yes, if they are taken at the mill and shipped to Seattle or Tacoma or San Francisco or Vancouver, there is only one handling to put them on the steamer.

Q. But how about the goods originating in Massachusetts, for instance? A. They would only have one handling.

2989 Q. They would only have one handling? A. One handling, yes.

Q. You said that the rates on these articles had varied less in this traffic than the rates on something else to European ports, is that it? A. Well, the rates on general commercial cargoes to European ports have varied more in the last five years than similar articles have to the Far East.

Q. Hasn't it been possible to contract ahead in the E pean Traffic? A. At times, yes, but not all the time.

Q. It has not been all the time? A. Oh, no, only occasionally.

2990 Q. Well, there is a Conference of the lines in European traffic, is there not? A. I don't believe so.

Q. You don't know about that? A. No.

Q. You wouldn't say, would you, Mr. Probst, that the sailings were as regular eight years ago as they are now? A. No, they were not.

Q. And hasn't there been more or less improvement in that regard as the volume of business with the Orient both ways has increased? A. Possibly, but I am not competent to answer that; it possibly has, but I am not competent to answer.

2991 Q. But you would say, wouldn't you, that the sailings were far more regular now than they were eight years ago? A. Oh, yes, decidedly so.

Q. Or seven? A. Yes, or five.

Q. So that the sailings were somewhat irregular from 1905, say, until about when? A. I don't remember.

Q. Well, isn't it within the last two or three years that the sailings have become more regular? A. Oh, no, within the last five years.

Q. Within the last five years? A. The last five years.

2992 Q. Say 1909? A. 1908 and 1909 they became regular.

Q. If this Conference was formed in 1905, there was a period of four or five years any way when the Conference did not give very regular sailings, wasn't there? A. I couldn't answer that without referring to my books; that is too far back.

MR. MACLAY: 1904 to 1907 or 1908 is not four or five years.

THE WITNESS: That is too far back for me to answer accurately.

MR. MONTGOMERY: 1904 to 1909 would be four or five years. 2993

MR. MACLAY: Yes, but Mr. Probst said 1907 and 1908.

THE WITNESS: I don't know, I couldn't answer that; it is too far back, I do not remember.

Q. But you do remember they are a great deal better than they were at one time? A. Oh, yes, they are a great deal better than they were at one time.

Q. And there has always been a Conference ever since you have been in this trade, so far as you know? A. As far as I remember, yes. 2994

Q. So there must have been some period, long or short, when the Conference did not give sailings that were as regular as they are now? A. It may be; I cannot remember that far back, to answer that question. It may be they were, I can't really remember without referring to the books.

Q. I think you have testified to it in another way, you have said they are better now than they were? A. They are much better to-day than they were five to eight years ago, unquestionably.

Q. Yes; how much better? A. I don't know. 2995

Q. Five or eight years ago they were quite irregular, were they not? A. Oh, no; honestly, I can't remember.

Q. You cannot remember about that? A. No, I don't remember about that.

Q. You certainly would not want to say they were regular five or eight years ago? A. I would not want to say either way, because I don't know, my memory doesn't run back that far, without reference to the books.

Q. You don't import anything? A. No.

Q. And do you receive any rebates at the present time on your shipments to the Orient? A. None at all. 2996

Q. How long since you have received rebates on shipments via the Suez lines? A. I don't know; five years or more.

Q. Five years or more? A. I couldn't tell you.

Q. You have been shipping all that time? A. Yes, oh, yes; the rebate system stopped, I couldn't tell you exactly, about five years or more ago; I don't recollect.

Q. Are you sure it was not less? A. No.

2997 Q. Are you sure it was not 1911 or 1910? A. To the best of my recollection it was not; I could tell by looking up my books, but I don't think it was. I think it is longer back than that.

Q. What volume of goods do you ship, about, in a year, in tons? A. Oh, it doesn't run much in tons; I suppose anywhere between three and five thousand tons a year.

Q. Three and five thousand tons a year? A. Yes.

Q. And that is evenly distributed, is it, fairly, over the year? A. No, it varies very much.

Q. What are the largest shipments you make in a month?
2998 A. Oh, I don't know, perhaps six or eight hundred tons some months.

Q. Six or eight hundred tons? A. It varies very much, there is no rule about it.

Q. Do you ever charter steamers to carry your goods over there? A. No, never.

Q. Why is that? A. The business is not big enough.

Q. Well, there are a number of other shippers that ship over there; you could combine with them, couldn't you? A. I could, but I don't want to.

Q. Why not? A. I don't want them to know my business.
2999 Q. And you don't know of it being done in this traffic? A. I never heard of it.

Q. None of the other shippers have come to you and asked you to combine with them to charter steamers over there? A. Never, no.

Q. How about going in with people that were not competitors, shippers of other lines of goods? A. I haven't the time to bother with it, it is not big enough.

Q. You mean that the loss of your time that would be involved would be so great as to use up even a considerable
3000 saving in rates that you might make, is that so? A. The rate has never been high enough to warrant it.

Q. Have you followed the charter market at all, investigated it? A. No. You see, if you charter a thing, you have got to figure on a lot of expense, and you have got to get all your goods done for one steamer, and they have got to be done at a certain time or you have to pay lay days. Oh, there are a lot of computations to make.

Q. So the accumulation of the cargo in itself would be a difficult thing to do, so to adjust your business that the

cargo would move in any considerable quantity at any one time? A. It would not be possible in my line of business. 3001

Q. You could not accumulate it well enough, could not accumulate enough to make much of a commission? A. No; it would be burdensome to finance it, too, to hold the goods and everything.

Q. So that you would not say that the possibility of shipping by tramps, so far as your business was concerned, furnished any potential competition to the Conference Lines at all, would you? A. I never investigated; my business has never been big enough to investigate it at all.

Q. At any rate, it has never occurred to you, is that it, as even a matter for investigation? A. Never. 3002

Q. The nature of the business is such that— A. (Interrupting) It is not big enough.

Q. (Continuing) You don't consider it at all? A. Never, it is not big enough; you cannot load a steamer with cotton goods; you have got to have other cargo with it.

Q. Yes. A. You have to have miscellaneons cargo to balance the boat.

Q. And the proposition of accumulating that, or getting somebody to cooperate with you and accumulate such a cargo, would be an avocation that you would not want to go into, is that right? A. Never thought of it; I haven't the time to give to it, never thought of it. 3003

RE-DIRECT EXAMINATION by Mr. Maclay:

Q. When Mr. Montgomery asked you about whether or not the Conference steamers ever stopped at Norfolk, you said, I think, no; and then said you wished to explain. Would you mind explaining what you were going to say? A. Well, it wouldn't pay them to stop there, for they would not get any general cargo. It would not pay them to stop there for a thousand or two thousand bales of cotton goods, and for no further cargo. 3004

MR. MONTGOMERY: I ask to have that stricken out as obviously not within the knowledge of the witness.

THE WITNESS: I don't know the steamship business; I don't want to answer to that line; it is a special line.

Q. The reference to the difference between the price quoted by the mill when you ship overland, as I understand it, is

3005 simply this: that the general custom is to quote a New York price, goods delivered at New York, and that when you take delivery at the mill they reduce the price to the extent of the transportation from the mill to New York, whatever that may be? A. That is right.

Q. In regard to regularity of sailings, can you state whether or not the sailings in the last five years have been more or less regular than they were in the ten years preceding that? A. To the best of my recollection, yes, but I could not say.

Q. Your recollection goes back fourteen years, you say?
3006 A. No, my experience does, but not my memory.

HOWARD AYRES, a witness called on behalf of the defendants, being duly sworn, testified as follows:

DIRECT EXAMINATION by Mr. C. C. Burlingham:

Q. You are the secretary of the China & Japan Trading Company? A. Yes, sir.

Q. And have been how long? A. Since 1898, I think.

Q. That company has been formed how long? A. As a
3007 company, since 1876.

Q. And it succeeded a firm? A. It succeeded the firm of William H. Fogg & Co., which, under that name and under the name of Fogg Brothers, had been in existence since 1844.

Q. Your place of business is in Burling Slip, is it not? A. Burling Slip.

Q. And has been for how long? A. Since 1855.

Q. Your business is what? A. Importing goods from the Orient and exporting goods of American manufacture to the Orient.

Q. And you have been doing that during your whole busi-
3008 ness experience? A. Yes, sir.

Q. And during that period from 1882, did you say it was? A. 1883.

Q. From 1883 until now you have been actively engaged in the China & Japan trade? A. Yes, sir.

Q. Exclusively in that trade? A. Yes, sir.

Q. And I fancy you are one of the largest shippers? A. Of certain classes of goods.

Q. To the Orient; what classes, particularly? A. Raw

silks into the United States, and cotton goods from the United States. 3009

Q. And besides that you ship every conceivable article from here to the East? A. Yes, sir.

Q. And import every conceivable article? A. Yes. Of recent years our import business has been principally confined to raw silk.

Q. That always comes by the Pacific and overland A. Yes, sir, overland.

Q. Canadian Pacific or our own railroads? A. Yes, sir.

Q. During that experience of thirty odd years, you have known times when there has been active competition between the steamship lines and times when there has been a cooperation by conference agreement, have you not? A. Yes, sir. 3010

Q. You have had experience under both systems? A. Yes, sir.

Q. What do you say as to the comparative advantages of the two systems from the point of view of the merchant? A. Well, without attaching them to the causes, I can say that the present condition of regularity of rates and of sailings is distinctly to the advantage of shippers.

Q. When the competition was very active between the lines, what was the state of rates? A. One of great irregularity, from extremely low rates which we knew were unremunerative, to higher rates as to which there was no certainty. 3011

MR. MONTGOMERY: I ask to have stricken out "which we knew were unremunerative," as not within the knowledge of the witness.

Q. What is the disadvantage to a merchant in fluctuating rates? A. Chiefly the uncertainty he has as to whether he is getting as good rates as any competitor of his in the same line of business. 3012

Q. And does that apply with any particular force to dealings by forward contracts? A. Yes, sir.

Q. Especially with reference to that? A. Most contracts are forward contracts for freight, yes, in this particular line of business to the Orient.

Q. Has the regularity of sailings improved in the last eight or nine years? A. Yes, sir.

Q. And what about your ability to ship directly to ports other than the ports of call, the outports, under the confer-

3013 ence systems? A. I cannot say, because we never ship to any except the regular ports.

Q. You ship to Shanghai and Hong Kong? A. Shanghai and the regular ports in Japan.

Q. Yokohama? A. Yokohama, Kobe and Nagasaki.

Q. And in China? A, Shanghai, only.

Q. Have you houses there, too? A. Yes, sir, at those ports.

Q. Do you compete with Europe in any of these exports? A. In cotton cloth, principally.

Q. There is, however, some difference, as I understand from other witnesses, in the character of the manufactured
3014 article in Europe and in the United States, is that so? A. Yes, sir.

Q. In spite of that, do you have to compete with European merchants? A. Yes, sir.

Q. Explain it, will you please? A. I prefer to make my explanation attach principally to cotton cloth, which forms, outside of oil and tobacco, the chief article of export to China.

Q. Yes. A. And in that the product of the mills in the United States has, until recent years, made its way on its merits through the markets of the north of China. Of recent
3015 years a competition has been set up from Oriental countries themselves, Japan, principally, and latterly from China itself, which we have to meet.

Q. What do you say as to the character of the rates themselves during the last eight or nine years, under the conference system?

MR. MONTGOMERY: That is objected to as incompetent, irrelevant and immaterial, and calling for a conclusion of the witness, not based upon any knowledge of the cost of carriage that the witness has been
3016 shown to have.

THE WITNESS: They have been fair, on the whole.

CROSS EXAMINATION by Mr. Montgomery:

Q. Do you ship cotton goods via the Pacific route? A. Very little, within the last few years.

Q. How long since you have been doing that? A. Since 1906.

Q. Why is it that you don't ship via the Pacific lines? A. Because of conditions existing within China.

Q. What are those conditions? A. Such conditions as 3017
have made it less necessary to hurry goods, in process of transportation, and because the difference in the rate has put a premium upon slower shipments.

Q. That is to say, you pay a premium for shipping the other way? A. Overland; the difference, one per cent., has been enough through these years of depressed trade in China to determine the route of shipment.

Q. Through all the years since 1906? A. 1906, yes, sir.

Q. What do you mean by one per cent.; do you mean one per cent. of the value of the goods? A. No, speaking quite generally, without reference to any particular period of 3018
months, the cost of freight overland has been about one per cent. higher than the cost of freight by way of Suez.

Q. You mean everything figured in? A. Yes, sir, insurance.

Q. Interest? A. Yes.

Q. Silk, on the other hand, comes entirely by the Pacific, doesn't it? A. Yes, sir.

Q. Because of what? A. Of the high cost of material, which makes the higher rate of freight a small factor in its ultimate cost.

Q. And I presume the item of interest would be very great, 3019
then, and insurance? A. Precisely, for the same reasons.

Q. And insurance? A. Yes.

Q. Do the Conference Lines quote a rate on silk, do you know, via Suez? A. I don't know of any shipment having been routed, nor of any rate.

Q. Do you ever charter steamers? A. No.

Q. To go to the Far East? A. Not since 1884.

Q. And why is that? A. Because the facilities for shipping have grown so frequent as to make it entirely unprofitable for any one shipper to engage a whole steamer.

Q. How about a number of shippers combining and chartering? Have you ever done that? A. No, not to my 3020
knowledge.

Q. Why is that? A. I suppose that has been lack of incentive; it has never been proposed.

Q. Well, is it a practical thing for a number of them to combine and charter steamers, from time to time? A. It would be difficult for any group of shippers to so arrange their obligations for shipment as to fill a steamer.

7 5 5

3021 Q. It would require a number of coincidences? A. Yes, sir.

Q. And a great deal of careful thought, would it not? A. Yes, sir.

Q. And time and negotiation? A. They would have to go out into the market as the steamship companies now do, and gather up freight to fill the steamers.

Q. Practically almost have to go into the business, wouldn't they? A. Practically.

Q. Of carriers? A. Yes.

3022 Q. So that in the lines in which you are engaged you would say, would you not, that the potential competition of tramps chartered by merchants, would be practically negligible in the traffic via Suez to the Orient? A. Unless the incentive were great, by a large advance in freight rates.

Q. Well, even if the advance were large, Mr. Ayres, would not these influences be apt to deter shippers from chartering? A. Yes, it would be a very difficult operation.

Q. In other words, the rates would have to be more than merely high; they would have to be very abnormally high, wouldn't they? A. So far as my knowledge of the situation goes, yes.

3023 Q. You yourself would not think of chartering steamers, unless rates were very high indeed, would you? A. Except as a last resort.

Q. Except as a last resort; and even then, you would not expect to take care of your business adequately by charter service; it would not be possible, would it? A. Not under present conditions, no.

Q. Now, do you ship by any other route than via the Pacific and via Suez? A. No.

3024 Q. Do you ship via Europe at all? A. Oh, very occasionally; but I group that under Suez, because the steamers go around that way.

Q. They do go that way, yes; we have been calling this the Suez conference, and I have gotten into the way of calling this the Suez route? A. I see.

Q. I guess it is not known by that name to steamship people. A. You see, we have only two great divisions.

Q. How frequently since 1905 have you shipped by Europe and transshipment? A. There have been two occasions within the last three years that I recall.

Q. And when were they? A. One in the present year and 3025
one year before last.

Q. And what were the reasons? A. Lower rates and better facilities.

Q. What articles were they, what was the product or were the products that you shipped? A. Cotton cloth, principally; some naval stores, that is all I recall.

Q. On the cotton goods, for instance, you made a saving in rate, did you? A. A slight saving in rate.

Q. How much was that? A. Five cents at one time, ten cents at another time, per 100 pounds.

Q. Let me see if I understand you; you shipped from 3026
what port? A. New York.

Q. From New York, via what line? A. At one time via Trieste, at another time via Bremen.

Q. And what lines of steamers were those? A. One was the Austrian lines, by way of Trieste; the other the North German Lloyd, I think.

Q. Via Bremen? A. Yes.

Q. And they took the goods, as I understand, at New York, and in one case took them to Trieste and there unloaded them and placed them on another ship and took them to Shanghai or some port in the Orient? A. Shang- 3027
hai, you can say.

Q. Shanghai, at five cents a hundred pounds less? A. Yes, sir.

Q. Than you would have paid by the Conference Lines? A. Yes, sir.

Q. And about what was the Conference Line rate at that time, if you recall? A. I should not like to say positively, without referring to books and papers; my recollection is that it was, in one case, 55 cents, and in another 60 cents.

Q. Perhaps, Mr. Ayres, if you could fix the time as nearly 3028
as your recollection enables you to, of the first shipment, that might help? A. These were only passing incidents in the course of our business, and they have not fixed themselves with precision in my mind.

Q. I understand, I don't want to press you for a definite date. A. I could give you that by reference; there is no objection at all.

Q. But roughly, if you could tell? A. Well, two years ago the shipments were made via Trieste, and early in this year by way of Bremen.

3029 Q. And it was the first time that the difference was five cents, was it, or the second? A. I think it was ten cents at that time.

Q. Ten cents at that time and five cents the second time? A. I think; but if you care to have those precisely I should like to give you the figures from the records.

Q. Well, the 55-cent rate you think was the earlier one or the later one? A. The earlier one, I think.

Q. So that the saving of freight was 10 cents a hundred pounds? A. 10 cents a hundred pounds in one case.

Q. Nearly 20 per cent. two years ago? A. Yes, sir.

3030 Q. And about ten per cent. at this time? A. Yes.

Q. By the way, you have competitors in New York? A. Yes, sir.

Q. And the competition is keen or not; is there keen competition for the business? A. All business competition is keen.

Q. What I mean is, is the competition such that a slight difference in rates, a few cents on an article, would make a difference of obtaining the orders, or not? A. It does in the China trade.

3031 Q. And then, do you know whether your competitors, like Arnhold, Karberg & Co., for example, ship via Europe at times, or not? A. I don't know; I can find out from the records, I presume.

Q. There have been times, have there not, when you have contracted shipments ahead? A. Yes, sir.

Q. For six months, or such a matter? A. Yes, sir.

Q. Now, of those shipments that you contract ahead, are they orders that you have sold, or are they going out to your houses in China to be sold? A. There is no rule that can be applied.

3032 Q. Then I take it that at times you contract ahead for all your shipments for a given period? A. Yes, sir.

Q. And in that form, don't you; that is to say, all your shipments for a given period, no specified amount? A. There is no precise form; the conditions of the merchandise markets and of the trade markets determine the nature of the contract we make with the steamship companies.

Q. Yes, but at times you do, do you not, make a general contract with the Conference Lines, under which they agree to take and you agree to ship all of your shipments of cotton

to the Orient for a given period of time? A. We have made such contracts. 3033

Q. Suppose you had a contract of that kind in force for a period of six months, at a rate of 60 cents, and then suppose that the firm or Arnhold, Karberg & Co.—I take it they are a rather alert firm, are they not? A. Very.

Q. Did I understand you to say that the firm of Arnhold, Karberg & Co. are not competitors of yours? A. The question was not asked me.

Q. Well, are they? A. Yes, sir; we are glad to have them so.

Q. Suppose you had a contract of that kind in force for a period of six months at a rate of 60 cents, and then suppose that the firm or Arnhold, Karberg & Co. should discover that there was an opportunity to ship via Europe at 10 cents less than 60 cents, how would that affect the competition between yourselves and Arnhold, Karberg? A. It would give them a distinct advantage. 3034

Q. And of course, I suppose that if it should happen that Arnhold, Karberg & Co. were tied up and you got the European rate, that would give you an advantage? A. Yes, sir.

Q. I understood you to say, Mr. Ayres, that there was an advantage that moved you in addition to the rate that concerned the facilities of shipment via the European route; is that correct? A. Yes, sir. 3035

Q. And what was that advantage? A. What I mainly had in mind was the excellent outturn of goods shipped by way of lines transshipping in Europe; goods reached their destination in almost perfect order, and our branch recommended us to continue shipments that way.

Q. That indicated more careful handling, I take it, than the shipments received by the Conference Lines indicated? A. The result was very satisfactory. Just what the steps were by which there was damage or freedom from it, we didn't know. 3036

Q. It was rather conspicuous, was it, the good condition in which they arrived? A. So much so as to cause the remark by our Shanghai branch.

Q. State whether or not that is an important factor in your business? A. Not of prime importance, but sufficiently so to be taken into consideration.

3037 Q. Have all the shipments you have made via Europe been by the port of New York? A. Yes, sir.

Q. And what other articles did you say it was, besides piece goods, that you shipped? A. Some naval stores.

Q. That is turpentine? A. Resin, principally.

Q. Resin; and that from the port of New York also? A. Yes, sir.

Q. Via Europe? A. Yes, sir.

Q. Do you recall whether there was a saving in rate on the resin? A. Yes, sir; I am not so familiar with the rates on general merchandise, because the contracts are very much
3038 cut up; I don't carry them in mind.

Q. Well, was it a material saving in rates? A. Sufficiently so to determine the route of shipment of an article of low cost.

Q. And were there considerations in regard to facilities in the case of resin? A. I don't recall any particular mention of that.

Q. Did the resin arrive all right, by those lines? A. So far as I know it did.

Q. There was no comment on it in that instance? A. I don't recall any.

3039 Q. You think the Conference Lines are probably competent to carry the resin all right? A. Oh, yes.

Q. The sailings, you say, are quite regular now, Mr. Ayres? A. Very.

Q. And rather more so than they were a few years ago, are they not? A. Yes.

Q. And when did the sailings become rather regular? A. I should consider the chief influence determining the regularity of sailings to be the growth of trade, which made regular sailings profitable to the steamship lines.

3040 Q. That, you would say, was the cause; and when did that cause bring about the result, about what year; or was it a gradual development? A. It was a gradual development, beginning, perhaps, in 1898.

Q. In 1898? A. Thereabouts.

Q. And they were growing more regular then right along from 1898 on: have grown more regular right along through from 1898 on to date? A. That is my recollection.

Q. And of course, you have been actively in the busine all that time, both ways? A. Yes, sir.

Q. And a careful student of conditions, of course? A. I try to know the kind of business I am doing. 3041

Q. Well, what I mean to say is, you have been in touch with all branches of your business? A. Yes, sir.

Q. And necessarily familiar with those matters? A. Yes, sir.

Q. And your best recollection is that this improvement has been gradual through times in which there has been competition and times when there has not been competition? A. Yes, sir.

Q. Would you say that during the period from 1905 on the rates have been higher, on the whole, or lower, on the whole, than in the period before 1905, generally speaking, and as nearly as you can recollect? A. I should not like to make any general statement upon a matter in which there has been so great a fluctuation over that long period. 3042

Q. You ship commodities to the Far East, I presume, that originate in a number of parts of the United States, do you not? A. Yes, sir.

Q. And will you please enumerate the ports of the United States at which the Conference steamers call for this cargo? A. So far as our own cargo is concerned, the whole shipment is concentrated in New York; it is not made from any other port. 3043

Q. Only in New York? A. Only in New York.

Q. Where does your resin, for example, originate? A. We buy it f. o. b., New York.

MR. MONTGOMERY: I ask to have that stricken out as not responsive.

Q. I guess you didn't understand my question, Mr. Ayres; my question was the point of origin of the resin? A. Well, it is manufactured in the Southeastern States. 3044

Q. Yes, that is what I mean? A. But the points of shipment I don't know, never do know.

Q. You don't know exactly where it is manufactured? A. No.

Q. But at some point quite remote from New York, of course? A. Apparently, but that does not concern us, because we buy our goods free on board steamer New York.

Q. And you don't know what the freight from the point of origin to New York would be? A. No, sir.

3045 Q. I take it, from an answer that you gave a little while ago, Mr. Ayres, that there has been a very large increase in the trade between the United States and the Orient in your experience? A. Yes, a general growth.

Q. Your own business, I suppose, has grown very largely? A. Yes.

Q. And your observation has been that the business of your competitors and people in other lines, trading with the Orient, has very greatly increased? A. Yes.

Q. And that increase of business has been continuous? A. No, intermittent.

3046 Q. Intermittent, but not confined to any particular period? A. China is a peculiar country to deal with, and so is Japan, in a lesser degree, and there are influences that work, political, which govern the volume of trade at periods, long or short, quite beyond the foresight of any man. But speaking quite generally, the trade over the last twenty or thirty years has grown in volume considerably.

Q. I suppose it has been interrupted greatly by the wars that have occurred out there? A. Yes.

Q. And then at other times it has picked up more rapidly? A. Yes.

3047 Q. You wouldn't say that the business had taken on a sudden and consistent boom on April 13, 1905, when this Conference was formed, and that it had grown as a result of this Conference alone? A. Commercial operations with the Orient are far too complex to attach to any one influence.

Q. There are, then, a number of influences, I take it, that have co-operated to bring about a large increase in business with the Orient? A. Yes.

RE-DIRECT EXAMINATION by Mr. Burlingham:

3048 Q. You spoke of certain shipments via Bremen and Trieste; are you continuing to ship in that way? A. We are not shipping that way just now.

Q. Are you shipping by the Conference Lines now, again? A. I think our contracts just now are with the Conference Lines.

Q. You have said that you think the improved regularity of sailings is due to the increase in trade, which makes it more profitable for the lines to send ships regularly; isn't that so? A. Yes, sir.

Q. But have you not had experience in periods of competition when ships were sent out rather irregularly, and some of the ships very nearly the same day, competing for the same trade; have you had that experience? 3049

MR. MONTGOMERY: That is objected to as leading.

THE WITNESS: Yes, sir.

Q. Is that at all satisfactory? A. It is unsatisfactory, so far as it prevents a subsequent steamer within a convenient period.

Q. If you have a congestion of ships at one time, it usually means a long period before you have another? A. It may. 3050

Q. And again, under the unrestricted competitive system, do not the ships select the most profitable ports from their own point of view?

MR. MONTGOMERY: Objected to as calling for a conclusion, and incompetent, irrelevant and immaterial.

THE WITNESS: That has never been a feature of the business in which we have been engaged.

Q. That cannot affect you, I suppose, because your shipments are all to a principal port? A. Principal port. 3051

Q. Shanghai? A. Yes, sir.

JOSEPH READ PATTERSON, a witness called on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION by Mr. C. C. Burlingham:

Q. What is your business? A. Exporting and importing between this country and China.

Q. With what house are you connected? A. Arnhold, Karberg & Co. of China. 3052

Q. Of what? A. The firm name is Arnhold, Karberg & Co. of China; we call ourselves "of China."

Q. Where is their principal place of business? A. We have offices in London, Berlin, New York, and some fifteen to twenty offices throughout the Chinese Republic.

Q. Where is your New York office? A. 21 State Street, New York City.

3053 Q. What is your relation to the firm? A. I am the General Manager in America.

Q. And how long have you been connected with Arnhold, Karberg & Co.? A. Three years and a half.

Q. Before that what firm were you connected with? A. Fearon, Daniel & Co., in the same business, exporting and importing between New York and China.

Q. For how long, please? A. For 27 years.

Q. And their place of business is in New York, principally? A. New York and China.

Q. Shanghai? A. Yes, Shanghai and Tientsin.

3054 Q. Have you yourself been in the Far East? A. Yes, I have spent altogether seven years out there.

Q. What years, please? A. From 1905 to 1912.

Q. And have been with Arnhold, Karberg & Co. particularly? A. Part of the time with them.

Q. What do they export, these two firms? A. Well, both firms export almost everything that is exported from America, from cotton piece goods to railroad machinery; and, in fact, everything that is sent to China, we pretty nearly, almost, deal in.

Q. Do you import? A. Yes, we do.

3055 Q. China goods? A. We are probably one of the largest shippers from China to Europe and America of China products.

Q. The firm of Arnhold, Karberg & Co. has been in business for a great many years, hasn't it? A. We celebrate our fiftieth anniversary in 1916.

Q. Have you had experience of periods of competition and periods when conference agreements were in force in the Far Eastern trade? A. Yes, I can recall those experiences very frequently.

3056 Q. From your experience, will you tell us what you think the comparative advantages of the two systems are, from the point of view of merchants?

MR. MONTGOMERY: I object to that as incompetent, irrelevant and immaterial, as calling for a conclusion, and not based upon specific facts or periods.

THE WITNESS: Well, from my experience, both in new York, or America, and in China, I don't hesitate to say that the advantages are altogether in favor of

the conditions existing under a conference or pool agreement, as I have found them. 3057

Q. Why do you say that? A. I should say, generally speaking, my experience of thirty years in the business goes to prove that stability in rates is more conducive to business than constant change of rates, as I have found them from 1885 to 1895; we had very severe competition among many of the shipping lines here in New York, and I can recall that the rates were forced down to a very low level, when it became unprofitable for the shipping lines, and also unsatisfactory for the merchants. 3058

Q. Why is it unsatisfactory to the merchants? A. Well, the rates varying from day to day, or from month to month, disorganizes business.

Q. Particularize? A. Well, I can mention specifically, in 1903, I think it was, and 1904, when there was such an enormous business done in cotton piece goods, so-called domestics, from New York to China, I think I am right in saying those years,—I may be a little bit off on that,—but we found that the rates fluctuated to such an extent that in doing a commission business as we did at the time (I am speaking now of my previous firm, of which I was a partner, Fearon, Daniel & Co.) we bought these goods on a commission basis, and when we delivered our invoices to the Chinese merchants, if, for instance, we might succeed in obtaining a rate of 20 shillings per 100 pounds and next month our competitors might have secured a rate of 15 shillings, our Chinese merchants would come to us and insist upon getting a refund of that difference. Of course, there is the uniformity in rates, as I say, regular sailings, and I have found that the steamship lines, both in China and in New York, have always lent a ready ear to questions regarding proper adjustment of rates; that is to say, when those more thoroughly familiar with the business than the actual shipping agents would approach them and indicate to them that they were quoting prohibitive rates on certain merchandise, they would listen to our story with willing ears, and adjust them to facilitate business; they would adjust them. 3059 3060

Q. Do you have competition with Europe in goods which you sell to the East? A. Yes, sir.

3061 Q. In many articles of merchandise? A. Yes, a great many.

Q. Does the freight rate play any important part? A. Very important.

Q. In your success in competition with those merchants? A. A very important part.

Q. Do you make forward contracts? A. Yes.

Q. With merchants in the East, covering what period? A. Oh, our contracts go ahead sometimes as far as six months.

3062 Q. Is there any superior advantage in either of these systems, the competitive or the Conference system, in respect of enabling you to carry out those contracts? A. Well, I think my previous answer covers that situation; the ability to be able to make forward contracts with the reasonable assurance that those rates would be maintained, and that the same rates would be quoted to all others.

Q. What do you say as to the character of the rates themselves during the last, say, eight or nine years, from 1905 on? A. I think they have been fair and reasonable in most instances.

3063 Q. Is there any competition in transportation with the Suez lines, overland competition? A. The overland competition is at times a very serious competition to the Suez lines, and we ship a great many goods by that method.

Q. What sort of goods do you ship, either way? A. Oh, cotton piece goods, machinery, cars, glassware—I should think almost every article may at times be shipped to China, perhaps, at more favorable rates by the overland lines, depending largely on the location of the manufacturing plant.

Q. From what point of origin, how far east do you send across the continent? A. Well, in my experience, we have

3064 forwarded goods cheaper from points as far east as New England, and of course, as far west as the Pacific Coast; it covers practically the whole territory east to west.

Q. Does that refer particularly to any particular class of cargo? A. It would, if you wish to specify. For instance, in New England my experience would show—in fact, I know that they ship cotton domestics cheaper from that point. Now machinery, I think, we have actually shipped knitting machines, for instance, to Canton cheaper from New England points.

Q. You mean the actual freight rates, or the interest on your money and time? A. Oh, yes, we include all that. 3065

MR. MONTGOMERY: I ask to have stricken out what the witness thinks; if he remembers anything about it, it is all right.

Q. Go on, please? A. We must always, necessarily, calculate the length of time that the goods take and the incidental loss of interest or gain in interest, the saving in marine insurance, and the question of freight returns; I mean, where we buy goods on an f. o. b. New York basis, the manufacturers allow us a rebate of what it would cost them to forward the goods to New York if we take delivery at the manufacturing plant. That varies according to location. 3066

Q. Do you import any goods from the East, overland? A. Yes, a great many.

Q. What class of goods? A. It is a long list, but I will try to enumerate some of them.

Q. Just a few? A. Goat skins, straw braid, palm leaf fans, matting, cassia.

Q. That is enough? A. That is enough; I can think of a great many more. 3067

Q. Do the lines have any competition in the chartered boats, are there any boats chartered to or from the East? A. Do you mean by that are there any other boats—

Q. I don't mean put on the berth, but I mean—

MR. MONTGOMERY: Run as tramps.

Q. I mean large shipments of bulk articles? A. Not to my knowledge.

Q. How does the Standard Oil Company send its oil out to the East? A. Well, of course, I am not familiar with the fact as to whether they are parties to the Conference arrangement or not. 3068

Q. Well, they are not, apparently; they are not made parties? A. At one time they were.

MR. BURLINGHAM: They are not now, apparently. I know nothing about it, but the pleading in this suit named one of the Standard Oil affiliated companies as a party defendant, but afterwards with-

3069 drew the proceeding as regards that company, as I remember.

MR. MONTGOMERY: I think you are a little wrong, Mr. Burlingham.

MR. BURLINGHAM: Am I? State it correctly. What was it? I think the Anglo-American Oil Company was named in the petition.

MR. MONTGOMERY: The Anglo-American Oil Company was named as a defendant and was a party to the Conference, but at or about the time that the suit was filed they withdrew from the Conference
3070 and filed no answer, and default was entered against them.

Q. (Pending question read.)

MR. MONTGOMERY: If you know.

Q. Well, if you know? A. I have no knowledge of the facts; I know they own certain steamers of their own.

Q. I don't want to ask you about their business especially, but do you yourself ever carry oil for the Standard Oil Company? A. No.

3071 Q. Or do you charter boats? A. We charter their selling vessels. They own certain sailing vessels, which they send out to Japan and China with case oil, and we charter them for the return voyage.

Q. Has there been any improvement in sailings within the Conference period, say, from 1905 on? A. Yes, we have had more frequent and regular sailings during that period.

Q. And has there been any change in the ports in the East, any development of the ports, since the Conference began? A. Yes, there has, but I don't see the pertinency of the question.

3072 Q. You mean, it may not be due to the Conference? A. Yes, I don't quite follow that.

Q. But are you able to make direct shipments to ports which formerly you had to send to by way of the larger ports? A. Yes, I can answer that in the affirmative.

Q. Give me any instance of that within your experience? A. Well, we have actually been able to ship, and it has been easier to arrange, in the years you speak of, to ship cargo direct to such ports as Dalny, Tientsin and Hankow.

CROSS EXAMINATION by Mr. Montgomery: 3073

Q. How long did you say you have been with Arnhold, Karberg & Co.? A. Three years and a half.

Q. And at what point in the Far East were you when you were there from 1905 to 1912, did you say? A. Shanghai was my headquarters, but I visited from time to time at Hong Kong, Canton, Tientsin, Pekin, Dalny, Mukden and Hankow, and Chin-kiang.

Q. While you were there were you personally engaged at any time in the business of Arnhold, Karberg & Co. as steamship agents of the American & Oriental Line? Did 3074
you have to do with their business as agents of the American & Oriental Line? A. Oh, when I joined the firm of Arnhold, Karberg & Co. in Shanghai, the firm represented the American & Oriental Line there, but that was run by a separate department, and personally I had nothing to do with it.

Q. They still represent them at Shanghai? A. Yes.

Q. And at Hong Kong? A. Yes.

Q. And they get a commission on the trade that goes both ways, don't they? A. I am not familiar with the terms of the agreement with the owners of the American & Ori- 3075
ental Line, but my impression is, if I may put it that way, that they receive a commission on the cargo actually shipped from China to Europe and North America.

Q. How about the cargo that is received in China, don't they get a commission on that? A. Well, presumably they they do, but that is just the impression I have, that the arrangement is that they get a commission on the outward cargo, but I think you may be correct in intimating that there is either that or a fixed stipend paid on the inward trade.

Q. So that they have quite an interest in the Conference 3076
Lines? A. They have a very much larger interest in the general trade between New York, Europe and China than in the Conference Lines.

Q. You don't know, of course, how many other lines they are agents for in other traffics? A. We represent, I think, in our various offices, probably two or three—let me see, I think we represent one of the Japanese lines, that is the only one I can think of; one of the Pacific lines.

3077 Q. Aren't you agents for somebody in the traffic between Europe and the Far East? A. Not unless the Japanese boats go there, and I don't think that we have the agency for that. I want to tell you, Mr. Montgomery, I am not very familiar, you see, with all the departments of Arnhold, Karberg & Co., having been there only for a very short time, and therefore I must qualify my statements about that, you see.

Q. I understand; I don't want to press you for anything you are not familiar with. You don't know, I suppose, the amount of money Arnhold, Karberg & Co. make from their
3078 agency of the American & Oriental Line? A. I could not answer that.

Q. Do you know whether or not the firm of Fearon, Daniel & Co. are agents of any steamship line? A. To the best of my knowledge, they do not represent any steamship lines. They did at one time, for some years, represent the Pacific Mail Steamship Company and their allied lines from the Port of San Francisco.

Q. From San Francisco? A. Yes. I mean the lines that are allied with the Pacific Mail Steamship Company. I
3079 think it is the Toyo-Kisen-Kaishan.

Q. Do you ever ship via Europe to the Far East, from New York? A. I don't recall in my own experience ever having shipped anything via Europe to the Far East, within the past ten years, possibly longer.

Q. So that you would not know of your own personal knowledge whether the handling of cargo was better by that route, or not, would you? A. In my own experience I have shipped a great many thousands of bales of domestics via Europe.

Q. To the Far East? A. Yes.

3080 Q. But not within the last ten years? A. Not within the past ten years.

Q. You would not know, then, I say, from your own experience in the last ten years? A. No.

Q. Do you know whether or not the rates charged at the present time by the Conference Lines are higher than the average rates were during the periods of competition before 1904? A. Well, now, you are comparing the period, say, from 1905 to 1914, with what previous period? For the previous ten years we will say?

Q. Yes. A. I should say that there is no question that 3081
the rates during the latter period were higher than during the previous period, on the average.

Q. I think Mr. Burlingham asked you for a general conclusion as to the reasonableness of the rates and that you intimated that you thought that they had been reasonable since 1905; am I correct about that? A. I think I replied that in my opinion they were fair and reasonable in most instances during that period.

Q. You think that there are instances in which they have not been quite as equitable as might be? A. There have been, but they have been exceptions, and as I previously 3082
indicated, when brought to the attention of the Conference have been adjusted in most cases.

Q. In most cases, but in some they, of course, have not? A. In some they have been somewhat arbitrary.

Q. Of course you know nothing about the cost of operating a steamship line at all; you have never had any experience of that kind, have you? A. I have had experience that would give me at least an idea, having chartered sailing vessels, which we now have under charter, and I think that forms at least a basis for comparison.

Q. Well, you would not say, would you, that the business 3083
of chartering sailing vessels occasionally would be sufficient to give you a general idea of the profits of a regular steamship line, operating steamships in both directions and charging various rates, and all that, would you? A. Yes, I would. I say, it would give me an idea at least. If you will allow me to reply to that question in my own way, I will say that the chartering of these sailing vessels is not irregular; we have been loading these boats in China and Japan ports for a great many years.

Q. How many? A. Well, I should say for at least ten 3084
years, possibly longer.

Q. Did you ever charter any steamers? A. Not in my experience.

Q. You say "we?" A. I am speaking of Arnhold, Karberg & Co.

Q. Arnhold, Karberg & Co.? A. Yes.

Q. And when you were with Fearon, Daniel & Co., they never did charter any steamers? A. No.

Q. Do you make a special charter each time? A. Yes.

3085 Q. Is that under some general arrangement with some other concern? A. I don't quite understand—with some other concern?

Q. These boats which you charter? A. We charter the boats owned by the Standard Oil Company.

Q. They are owned by the Standard Oil Company? A. Well, I think they designate themselves as owner's agents.

Q. But they are controlled by the Standard Oil Company? A. Controlled by the Standard Oil Company.

Q. And carry their oil out there? A. Yes.

Q. And then they charter them to you to bring them
3086 back? A. Yes, we charter them for the voyage from Japan and China ports to a port or ports in America.

Q. And do the Standard Oil Company send steamers out there sometimes? A. Yes, I believe they do; I don't know that.

Q. Do you charter those back? A. No.

Q. Why is that? A. I don't know. We have never been offered the charter of the boats for the return trip. I don't know of my own knowledge that these boats do go out; I understand that they do send out their own steamers.

Q. You know they used to be a member of this confer-
3087 ence homeward? A. Yes.

Q. And you know, as a matter of general information, don't you, that the boats that they run in this homeward traffic were boats that went out there loaded with their own oil? A. I don't know that of general information; it is more or less news to me.

Q. Well, I think that is the fact. A. These boats, you see, these sailing vessels that we charter, for instance, last year—I want to follow up my idea that I know something about the general conditions. We chartered these three
3088 boats, loading 20,000 tons of cargo. Now, we make our rates for all the different kinds of cargo we carry on those boats, and know the cost of transportation.

Q. You act as common carriers, do you? A. As common carriers. We load those boats in Japan, Tsing Tan, and Hong Kong and send them on to Baltimore and New York.

Q. And what kinds of cargo do you bring on those sailing vessels? A. We bring matting, palm leaf fans, cassia, bamboo, black wood ware, rattan furniture, joss sticks, and China reeds. I think that covers the general run. You might add wood oil.

Q. And do you act as principals in chartering these ships? 3089
A. Yes.

Q. Do you know whether or not the firm has to account to the pool for the results of those voyages? A. No, they do not.

Q. They do not have to; are you sure about that? A. Absolutely certain of it. The pool doesn't like the idea of our having the sailing vessels on the berth; in fact, I might tell you another thing, that some of the members of the pool have made a motion in their meetings that we be debarred from the privileges of the rebates on freights that accrue on cargo from the East. 3090

MR. BURLINGHAM: I move to strike that out as irresponsive.

Q. That is to say, the deferred rebates? A. Yes.

Q. Then your firm does obtain deferred rebates for loyalty to the Conference Lines, is that right? A. I would not put it that way.

Q. Well, how would you put it? A. There is a deferred rebate system on shipments from the Far East, not from New York.

Q. What for? A. One of the conditions is that the shippers confine their shipments to the steamers of the Conference. 3091

Q. And you get that? A. Yes.

Q. You get those rebates? A. Yes. Let me emphasize that that is only, to my knowledge, on cargo from China to Europe and America.

Q. I understand, but on all your shipments from the Far East to New York, via the Conference Lines, you get this 10 per cent. deferred rebate, do you not? A. Yes.

Q. In addition, of course, to your commission as freight agents on such goods as move from the ports where you are agents? A. Well, as I have stated before, I am not familiar with the arrangements under which we act as agents for the Oriental Lines. 3092

Q. You are familiar with the terms of that rebate circular, are you? A. I have not seen a copy of it in recent years. I seem to recall the general tenor of it.

Q. I call your attention to Petitioner's Exhibit 9, at page (506) of the record, which is an exhibit produced by Mr.

3093 Dodwell of the Dodwell Line, which reads, in part, as follows, "To those Exporters from China, Hong Kong, and Japan to the United States of America, by steamers (shipments by the Pacific routes excepted) who from the first of May, 1907, to the 31st of October, 1907, may have found it to their interest to confine their support and shipments during that period to steamers loaded by us," etc., granting the rebate,-- A. (Interrupting) "Loaded by us," what does that mean?

Q. It is signed by Dodwell & Co., but contains the clause that "Until further notice, shipments made by steamers of
3094 the Hamburg-America Line, Indra Line, Limited, Shewan, Tomes & Co., Anglo-American Oil Company, Limited, Union Line, and American Oriental Line, will not invalidate the claims for the rebate?" A. Yes.

Q. I ask you if it is that notice that the Conference Lines construe as preventing your shipping via sailing vessels? A. I think you have misunderstood my statement. I made an assertion that in view of the fact that we had chartered these sailing vessels, I have been informed that the Conference have at least considered the question of—

3095 Q. Of changing the conditions? A. No, that the mere fact that we were loading these vessels, we were thereby forfeiting our rights to the deferred rebate.

Q. You mean making that *ex post facto,* or do you mean to make a new rule for the future? In other words, do you mean that they construe this notice as only entitling you to rebates— A. (Interrupting) No, I don't understand so—I understand that they make a rule—

Q. (Interrupting) That they advocate a change in the terms under which you get a rebate? A. Yes.

Q. Which would preclude you from shipping by the sail-
3096 ing vessels? A. But no action has been taken along those lines.

Q. That, you say, has been discussed by the Conference? A. I have been informed that that has been discussed by the Merchants in China.

Q. And where do you get that information, Mr. Patterson? A. From our Hong Kong office.

Q. By letter? A. Yes.

Q. Could you produce the letter? A. I should think I could probably find it.

Q. I would like to see it; I may not want to introduce it, 3097
but I would like to have the letter. A. I shall endeavor to locate it for you.

Q. You say you never have chartered steamers at all? A. Of course, you are addressing me; I am giving you my experience covering a period of thirty years. I personally have never chartered a steamer.

Q. I understand; so far as you know, Arnhold, Karberg & Company never have chartered, have they? A. Not since my connection with them; I have no knowledge of what transpired before that.

Q. There are a number of lines of cargo that you don't 3098
get by those sailing vessels, aren't there? A. It doesn't pay to help the higher cost articles from China by sailing vessels.

Q. What articles have you in mind? A. The silk; wool figures very closely, but still at the present steamer rates; and, considering the saving in insurance and interest, it is cheaper to ship by steamer; and, in fact, I think it might be safe to say that it is only on comparatively few of the articles shipped from China that it is profitable to use the sailing vessel rate.

3099

Q. On these sailing vessels, what proportion of the cargo is carried on your own account? A. As a rule very little, our business being confined almost exclusively to accepting orders to be executed on a commission basis for account of American customers.

Q. On what proportion of the cargo of these sailing vessels do you control the routing? A. The routing from where?

Q. From the Far East? A. We have no control over the routing. The cargo is accepted, either as being shipped by ourselves or by other firms in the Far East consigned to 3100
Baltimore or New York.

Q. I see; they go to only those two ports? A. Yes. During the last year they came to New York only.

Q. Do you know whether or not the Conference offers a regular service to Baltimore? A. They do not.

Q. You don't know what the opportunities to ship to Baltimore from the Far East are, by the Conference? A. It is very seldom that an opportunity offers, because there is no sufficient inducement.

3101 MR. MONTGOMERY: I ask to have stricken out that there is no sufficient inducement.

Q. How do the rates that you charge on these articles that come by sailing vessels compare with the rates that the Conference Lines charge? A. The rates, taking into consideration the increased marine insurance and the increased interest, are very close to the rates charged by the Suez steamers; so much so that we have to watch that situation very, very carefully, to offer any inducements to shippers to forward cargo by the sailing vessels.

3102 Q. But you do go below the Conference rates? A. Oh, we must go below the Conference rates.

Q. You mean, you must go below the Conference rates with all these elements considered, interest and insurance and all; you must still be below the Conference rates, to get the business? A. Yes. I might explain that perhaps, by explaining that you must offer shippers an inducement to run the risk of the uncertainty of the delay in the arrival of the sailing vessels. They may take five months, they might take eight months, to arrive here. That is the risk the shippers run.

3103 Q. But you don't go far below the Conference rates? A. No, we only go so far as to get the business, so far as is necessary to secure the business. We found last year, you might be interested to know, that on certain of these articles, low priced articles, which you can only ship by a sailing vessel, the overland lines could land them in America cheaper than we could take them.

Q. You say that you could only ship by sailing vessels some of these articles? Did I understand you correctly? A. No, I said the articles that only could be shipped by sailing vessels, on account of their low price.

3104 Q. Do you mean the only articles that could be, or the articles that it is only advisable to ship by sailing vessels? A. I am referring to the low priced articles, such as I have enumerated.

Q. You don't mean that sailing vessels is the only way by which they can come? A. No.

Q. You mean those are the only articles that can come that way? A. Yes, that is the idea.

Q. What investigation have you made to determine wheth-

er you may charter steamers to bring those along a little faster? A. We have made none. 3105

Q. No investigation? A. No.

Q. And, of course, that is due to the terms of this deferred rebate circular, under which both yourself and the shipper would forfeit the rebates if you and they did ship by a chartered steamer, is that right? A. No, I would not answer that in the affirmative.

Q. You would have to if you answered it at all, wouldn't you? A. No, I don't think so; I should say the reason—

Q. (Interrupting) I call your attention to this exhibit 9, and ask you to read that very carefully, and then tell me whether you would be entitled to a rebate if you chartered a steamer and shipped by it (handing witness exhibit 9)? 3106

MR. BURLINGHAM: I object to this as it is a question of law, and the interpretation of a written instrument.

Q. Will you read the circular, and then tell me whether you would consider that as entitling you to ship by steamers outside the Conference, from the Far East to New York? A. Is your first question in connection with this? You said you wanted to know what was the reason why we did not consider the question, as I remember it, of chartering a steamer? 3107

Q. Yes, that is right. A. And I said I couldn't answer that this was the reason for it. I should say, in reply to that question, that we consider conditions under the present arrangement satisfactory, but just the moment that we found those became intolerable or the Conference arbitrary, we would very quickly consider the question of chartering steamers.

Q. You say that you would charter other steamers, if conditions became unsatisfactory? A. Yes. 3108

Q. You mean conditions of sailing charters? A. I am referring to the conditions of the present Conference, the present Conference conditions. Our charter of sailing vessels, we consider, is quite separate and apart from this general arrangement, and therefore, thought that any action contemplated by the Conference, as I have already intimated, would be entirely unwarranted and unjustified.

Q. That is because the rebate circular mentions steam-

3109 ers, isn't it? A. No, we charter the sailing vessels for the primary object of increasing our very large, at present, export business from China.

Q. Exactly, but the reason that the chartering of sailing vessels is not interpreted by you as being in conflict with the understanding of the rebate circular, is that the rebate circular mentions steamers, is that right? A. Yes, I think that may be considered correct.

Q. So that you feel that you are entitled to charter sailing vessels, and offer others and get for yourselves a lower rate of freight in competition with the Conference, and you
3110 do it? A. Yes.

Q. And you feel that you are not entitled to charter steamers and get a lower rate of freight, for yourselves and for others, and you don't do it, is that right? A. I don't say that we are not justified in doing it.

Q. Well, if you did do it, under your construction of that rebate circular you would have to abandon your rebates, wouldn't you? Have you read the circular? A. Yes, I have. According to the terms of that circular, the rebates would be forfeited.

Q. Yes. A. But I don't know that we would consider that
3111 final.

Q. But they would be forfeited not only to you, but the rebates of the customers for whom you wanted to carry would be forfeited, too, wouldn't they?

MR. BURLINGHAM: That is objected to also as calling for an interpretation of the law.

THE WITNESS: I repeat, that would be my interpretation of this agreement.

Q. You would not expect to get them if you chartered a steamer? A. I don't say that; I say that according to my
3112 interpretation of this circular, that is the only interpretation that a layman could place upon it. We would not let it rest there, if at any time they refused to give us our deferred rebates, for any reason whatsoever.

Q. You would try to get it? A We certainly would.

Q. In spite of the fact that you would think it was forfeited? A. No, I didn't say I thought it was forfeited.

Q. I understood you to say you did think so? A. I said the interpretation of this circular would be that it would be forfeited.

Q. Don't you understand that that circular is still in ef- 3113
fect? A. So I understand.

Q. Then what the circular says would control, wouldn't it? A. I shouldn't think so.

Q. Well, now, why not? A. Well, a great many things are put down in printing, like a good many clauses on a bill of lading, which we accept, but we do not consider them final. In other words, as a layman, as far as this circular is concerned, I don't know, but I should think it is very questionable—I don't know the law, I am not a lawyer.

Q. I want it definitely understood that I am not asking for your conclusion as to what a court would say about that 3114
rebate circular? A. Yes.

Q. I think I know; I am asking you about the interpretation that you would place upon it yourself, as to whether or not you would feel that you could make the claim for rebate under it?

MR. BURLINGHAM: Objected to as incompetent, irrelevant and immaterial.

Q. I call your attention in this connection to the claim for rebate, which is Petitioner's Exhibit 9-A, also produced by Mr. Dodwell, and sent to the shipper with the rebate 3115
notice, Exhibit 9, a part of which claim for rebate reads as follows: " (meaning the claimant), have not been interested in any shipments from China, Hong Kong and/or Japan to United States (shipments by the Pacific routes excepted) (rice and oils from Japan excepted), through the above named period, by vessels other than those of Hamburg-Amerika Linie" and other lines, naming them, "Yours faithfully. This form must be rendered in triplicate through the company's agents, who will certify to the correctness of the shipment." Now do I understand you to say
3116
that if you chartered a steamer and shipped by it, that you would sit down and make out a claim for rebate making that certification? A. No, I have not said so; we would put in a claim.

Q. In that form? A. No, not in that form; a modified form.

Q. Then you would understand that a shipment by a chartered steamer would preclude you from making that claim, wouldn't you? A. It would preclude me from signing the

3117 claim in that form, but it would not preclude me from—

Q. (Interrupting) And you could only get—

MR. BURLINGHAM: Let him finish; would not preclude you from what?

THE WITNESS: From submitting the claim in another form.

Q. You would feel, wouldn't you, that if you did get your rebate, it would be not as result of an agreement or an understanding, but as a result of a concession from the understanding made by the Conference Lines, wouldn't you?

3118 A. No, I want to call your attention to one fact, Mr. Montgomery, that as far as my knowledge goes, and experience, we never sign or accept that agreement.

Q. I understand, but you pay a rate of freight? A. Yes.

Q. And when you pay it, you have in your possession this notice? A. Yes.

Q. That says, if you do certain things, we will reward you for it? A. Yes. Well, we expect them to do it whether we did it or not, that is what it says; but we don't sign that agreement.

Q. I understand. A. It might be an implied one.

3119 Q. But at any rate, you don't know of the situation having arisen, you don't know of a claim for rebate having been paid, when you have chartered steamers; you never have chartered steamers from there? A. I don't think we have ever chartered any steamers.

Q. And you don't know of anybody else who has chartered any steamers from there? A. Not to my knowledge, no.

Q. You never have even investigated to know whether it was a profitable thing? A. We have a general idea, as a firm

3120 and as a merchant of long experience, about what we consider fair and equitable rates, and just when they get beyond that point we make a very serious protest. On the question of rates via Suez, both from China and to Japan, it has always been somewhat of a mystery to me—I am not holding a brief for the Conference Lines—but it has always been rather a mystery to me how they were able to carry cargo so cheaply, considering the many ports of call that they go to, the length of the voyage and so on; when you consider the fact that I can bring on wool from Tientsin, from an in-

terior place as it were, bring it on here to New York at a cost of less than 50 cents a hundred pounds, or less than it cost me to ship it down to Mobile, perhaps, by rail. It seems to me those are fair rates. 3121

MR. MONTGOMERY: I ask to have all that answer stricken out as not responsive. Read the question.

Q. (Pending question read) Now, will you answer the question as to whether you have made any investigation to see whether the business of chartering steamers and carrying freight in them from China and Japan to New York would be a profitable business? A. No, sir. 3122

Q. And you know of none having been made by your firm? A. No, sir.

Q. In spite of the fact that for ten years you have been chartering sailing vesels, more or less, off and on? A. Yes.

Q. Do you know whether the charter rates have been lower on steamers for the last year or so? A. I don't know that. I understood that during the last two years, my understanding is, that the rates have reached almost record figures for chartering steamers.

Q. Well, then, they have dropped considerably from the high mark, haven't they, for over a year now? A. Well, I don't feel that I am competent to answer the question. I can only speak from my experience in chartering sailing vessels, which may be some indication, if that is of any interest to you. 3123

Q. I don't care about the rates on sailing vessels at this time, but you don't know anything about the rates on chartered steamers? A. I know something about them, but I don't feel competent to—

Q. You don't know whether the Conference rates have dropped in a corresponding ratio with the rates of charter? A. There has been a decline in rates during the past six months, but I am not prepared to say whether it is in the same proportion that there has been a decline in charters. 3124

Q. And that decline has not been uniform upon all articles, either, has it; you know that, it has not been a horizontal drop? A. No.

Q. It varied in the percentage; some articles have not dropped at all, have they? A. I think it has been governed by the demand of the traffic for space.

3125 Q. And more or less by what the traffic would bear, I suppose? A. Yes, I should think so.

Q. And you don't know, as a matter of fact today, whether it would be profitable to charter steamers and make up cargoes from the Far East to the United States? A. No, I could not answer that question.

Q. You say that you make forward contracts for six months ahead, sometimes? A. Yes, sir.

Q. And I understood you to say that you had the assurance that the same rate would be quoted others when you made a contract; as I understand it, that contract is at a
3126 given rate for six months? A. I don't think I replied that we had an assurance; I said we felt assured, under present conditions, that there would be a uniformity in rates during that period.

Q. Suppose a change in rates comes? A. Oh, let me modify that. I think you have got a wrong impression. I think if you will look up the records, I was asked whether—I probably misunderstood the question of Mr. Burlingham. I was asked whether we contract for goods ahead, as I recall the question on previous examination, and I said sometimes as far ahead as six months. Now you are putting it
3127 as though we contracted for the freight ahead. Do you mean to intimate that we contract for the freight ahead for six months ahead?

Q. Yes. A. It is very seldom that we do that.

Q. But you do, at times? A. No, I do not remember at any time we have done it.

Q. You have heard Mr. Ayres testify that he did at times? A. Yes.

Q. Suppose Mr. Ayres gets a rate for six months ahead, and you have no contract for space, and then you want to
3128 make a shipment, you are apt to have to pay a higher rate than he has paid, aren't you? A. I think that is a possibility, but not a probability.

Q. Why wouldn't that be probable, if the rates should advance A. Why wouldn't it be probable if the rates advanced?

Q. Yes. A. It would become a fact, if the rates advanced; we would have to pay it.

Q. Well, there have been times when the rates were advancing? A. Yes, and they have declined as well; we run the risk of the market.

Q. So you have speculated on the trade market? A. Yes. 3129

Q. Generally speaking, goods originating in this part of the United States cannot be moved by the Pacific lines very well, can they? A. Generaly speaking, it is cheaper to ship by Suez.

Q. Generally speaking, that is, the expensive rail haul makes it possible to carry them cheaper via Suez? A. Yes.

Q. And you have named some exceptions, but those are exceptions, and not the rule, where it is cheaper to carry goods originating in the eastern part of the United States via Pacific lines? A. Yes, those are exceptions.

Q. You have heard Mr. Ayres testify that the business 3130 had increased very materially in the last twenty or thirty years, with China and Japan, and that while it had been intermittent, it was not confined to any recent short period; do you agree with that? A. Not entirely; there has been in some articles a—

Q. (Interrupting) I was speaking, by the way, of the trade as a whole. I don't want to interrupt you. A. How did he describe it, again? He gave the impression that it was a big increase. I don't agree with him there. There has been a slow, reasonably steady increase of the trade with China, speaking generally; some articles have fallen 3131 off very considerably.

Q. But generally speaking, of the great volume of trade both ways? A. There has been a slow, but from my point of view disappointing development. I got the impression from what he said that there was a very large and satisfactory increase in the trade.

Q. I don't know that he meant it was satisfactory. A. Well, increase of trade means an increase of profits and business, and as a matter of fact, owing to the disturbed conditions in the Far East, it has been retarded somewhat. 3132

Q. Retarded? A. Retarded.

Q. But there has been this increase, as long as you have known about this trade it has been increasing somewhat, generally speaking, hasn't it? A. Yes.

Q. So that you would not say that the period in which the Conference had been in effect was co-terminous with the period of increase in business, would you? The Conference has been in existence since 1905? A. Exactly. Well, I can say there has been a growth in the business since

3133 that period, and there was a growth in the business prior to that period.

Q. You don't notice any more rapid growth since 1905, do you? A. Well, I should say conditions have been more satisfactory in the China trade during the last ten years, but I don't attribute it to the Conference. China has opened up and started railway building, and all sorts of things that affect the trade.

Q. You can think of a number of causes to which this development can be attributed? A. Yes.

Q. And do you know whether or not the world trade with
3134 China has increased in the same period? A. It has, yes.

Q. And has been increasing since before that time? A. Yes.

Q. Since before 1905? A. Yes.

Q. The development of the outports has gone along with that development of the business, hasn't it? A. Yes.

Q. And the outports have increased in importance, the same as some of our own cities have increased in importance? A. There has been a natural evolution of business.

Q. A natural evolution of business, and that I suppose, is attributable to numerous conditions, local and otherwise?
3135 A. Yes, sir.

Q. Do you know about how much the rebates that your firm obtains on their shipments from the Far East amount to, in a year? A. I don't know.

Q. Do you know how much it would be from any one port? A. I could not tell you that; you see, our exports vary, and I could only give you the volume of our export business.

Q. That is, your exports from China? A. Yes.

Q. You don't know what the value of it is, then? A. Yes, I can tell you.

3136 Q. The amount of the freight is made up in China? A. I couldn't tell you the freight; I could tell you the approximate value of the cargo we shipped.

Q. Well, could you tell me approximately the freight, whether it is $100 or $1,000,000? A I would not attempt to answer that question, Mr. Montgomery. I don't know. You see, there are so many, we ship probably 50 or 100 articles from China, all different rates of freight.

Q. I understand, and you have no records of that in your office? A. No. The bulk of our business is to Europe, you see.

Q. Can you tell whether or not, on the articles imported from China to the United States, the business is done on a narrow margin, generally speaking, or whether there is a wide margin of profit? A. Are you referring to such concerns as ours, established in China? 3137

Q. Yes, the things you handle? A. The business is done on what we consider a very small and inadequate margin of profit.

Q. Very narrow? A. Yes.

Q. So that the forfeiture of a rebate of 10 per cent. of the freight paid, might be a very important factor in the year's business of a shipper, might it not? A. Yes, I will concede it is an important item, but it is not a very large percentage, on a percentage basis, of the profits. In a business reaching such a large volume as ours, it is an important item. 3138

Q. On some articles it would represent quite a proportion of the profits, wouldn't it? A. Well, I can very quickly, if you will give me a moment, figure it out roughly in my mind. Take wool, for instance, costing seven pence a pound, that would be fourteen cents gold; we might make three per cent. commission, perhaps four per cent. commission, that would be 56 cents, half a cent a pound. Do you follow me? I mean to say seven cents a pound, running through my own mind, is fourteen cents, 56, we would make half a cent, and the rebate on the freight would be five cents, so that is about one-tenth of our commission. 3139

Q. That would be ten per cent. of your commission? A. Yes.

Q. Not your profits? A. No, the commission.

Q. Of your gross profits? A. Gross profits, yes.

Q. And would that be about a fair proportion on other articles? A. Well, I would have to figure those things out. I don't know how that would work out on some of the other articles; it might be more, it might be less. 3140

Q. I see, but roughly speaking it would be quite an item on almost any article, wouldn't it? A. Well, that is a comparative statement; I have already conceded it is an important item in our business.

Q. About how much wool do you import in a year, from China? A. We ship about 25,000 piculs a year; that would be three million to three million five hundred thousand pounds.

3141 Q. Three to three and a half million pounds. Well, at the present rate of freight about what would the rebate amount to on that? A. Four to five cents a hundred pounds.

Q. Well, figure that up, please? A. In reply to that question I will say on the basis of three million pounds, the approximate rebate would be $1,200 United States currency.

Q. $1,200? A. Yes.

Q. On the wool? A. Yes.

Q. I think you made the general statement that there is an advantage to merchants in favor of the conference or pooling agreement; you are not familiar enough with the
3142 workings of a pooling agreement to know just what the effect of the pooling agreement would be, are you? A. Well, are you differentiating between the Conference and the pool, or are you referring to the same thing?

Q. You used the term "pooling agreement." Now in conferences there are various kinds of conferences, and what you have spoken of particularly are stability of rates and sailings? A. Yes.

Q. What I wanted was, whether there was anything that you had in mind as a pool, whether you attempted to connect the pooling agreement, the pooling of the profits with
3143 any of these benefits? A. No, that was not the significance of the remark.

Q. You don't know anything about the pool as such, nor the effects of it? A. No, I only referred to the pool as the present conditions that existed.

Q. And you don't know of your own knowledge, nor in any other way, just how far what benefits may have come to shippers with the development of business may be attributable to the Conference at all, and how far other conditions may have operated to bring about these good results, do
3144 you? A. No, I do not.

RE-DIRECT EXAMINATION by Mr. Maclay:

Q. In reference to these rebate circulars, are they open and public, or are they private, as far as inspection goes? A. My experience is they are obtainable by going to the various lines and asking them for these forms of rebate.

Q. In regard to forward shipments, Mr. Montgomery, I think, asked you if you got a rate some months in advance, and you said no, as I remember it. Isn't the chief point of

steady, uniform rates in connection with forward shipments 3145
the fact that you can rely upon the rate remaining approximately the same? A. Yes. I don't know whether I am in order in saying this, but if not please stop me. Mr. Montgomery mentioned some of the advantages I have mentioned. There is one thing I did overlook, and that is the fact that under the conference arrangement it has been very, very satisfactory to us at times to be able to divert a shipment contracted by a certain steamer to another boat of the same line. Under the old conditions, we made our contract perhaps with one line, a month or so ahead. You see, the steamer might be delayed, and we are now enabled to divert 3146
it to another boat under the arrangement with the Conference.

Q. Do you mean another boat of the same line, or another Conference boat? A. Any boat that happens to be on the berth, of the Conference Lines.

Q. You have spoken of the narrow margin of profit in this Eastern business; that is another thing that makes steadiness of rates important to the merchant, isn't it? A. Yes, sir.

Q. Referring to the matter of charter, although you may 3147
not have made any investigation at any time of the rates for which you could obtain boats on charter, may you not know from your general experience and knowledge that you would not be able to bring wool, as I think you mentioned, from Tien Tsin as cheaply by chartered boats as by the Conference boats?

MR. MONTGOMERY: I object to that as incompetent, irrelevant and immaterial, and as obviously calling for a guess on the part of the witness. Unless he knows something about what charter rates are, and a number of other conditions, it would be impossible 3148
for him to know whether they could be carried in competition with the Conference.

THE WITNESS: No, I have not sufficient knowledge to reach that conclusion.

RE-CROSS EXAMINATION by Mr. Montgomery:

Q. You spoke of diverting shipments from one line to another; how often does that occur? A. Well, it is not, perhaps, frequent, but it happens in these cases, when at all,

3149 when we make a conditional reservation or tentative reservation by a steamer sailing, say, on the 10th of July, that may, for some reason or other, anticipate her schedule date or may be delayed, and our cargo arrives in New York, it may be locomotives or rails or whatever the case may be, and as I understand it while in a way bound to that particular line, we can place the goods upon one of the other steamers that may be on the berth at the time, although being dispatched by different agents.

Q. Well, if you did not have that privilege, you could adjust your business so that you could meet the sailing
3150 dates of the lines individually, without great inconvenience, couldnt you? A. No, it might result in rather serious consequences. We enter into very large contracts, not only with the Chinese government, but with the Chinese railroads, involving very large sums of money and very large shipments. In a recent case we were called upon to guarantee the arrival of a large quantity of steel rails and locomotives at Taku bar, in China. Now it is one of these instances I mention where, had we been obliged to put the goods on the steamer we had tentatively engaged it for, or hold it for that boat which had been delayed, we would
3151 have been obliged to pay the fine of quite a large sum per day for each day of delay in delivery in China.

Q. That is to say, the boat had been delayed in arrival here? A. Yes.

Q. The boat that you were going to ship by? A. Yes.

Q. But if you had various arrangements with various lines, for shipments on given dates, and the boats kept their dates, and reciprocally you kept yours, the matter would be adjusted all right, wouldn't it? A. Yes, but in this business it is very difficult to adjust things to that nicety where we can
3152 keep the dates. There must be a good deal of give and take by the steamship companies and by the merchants. A steamer can very easily be delayed, or she may anticipate her schedule date, and on the other hand in the manufacturing of locomotives there might be a delay in the delivery of the cargo. You cannot adjust it to where you can carry out your agreement with the steamship agents, nor can they guarantee their sailing dates.

Q. You say that the sailing dates are not guaranteed? A. No.

RE-DIRECT EXAMINATION by Mr. Maclay: 3153

Q. That is by reason of the unavoidable vicissitudes of business? A. Yes, and the long runs that these boats have. Even our Trans-Atlantic liners don't guarantee their sailing dates.

ROBERT H. BLAKE, recalled.

DIRECT EXAMINATION by Mr. Maclay:

Q. Mr. Blake, one of the witnesses testified, in regard to shipments via Norfolk, that it might be advantageous, if it could be done, to have the Conference boats stop there. 3154
Can you state whether or not, at the present rate, it would be possible for the Conference boats to make the call at Norfolk?

MR. MONTGOMERY: I object to that as incompetent, irrelevant and immaterial, calling for a conclusion of the witness, their being nothing in the record to show that the witness has any knowledge or has ever made any investigation, or even knows anybody that has ever made any investigation, of what cargo could be obtained from Norfolk. 3155

Q. Allow me to ask, from your experience in the steamship business. Can you state whether or not at the present rates it would be possible for the Conference boats to make the call at Norfolk?

MR. MONTGOMERY: I have the same objection. Experience in the steamship business does not necessarily involve any inquiry or investigation into the Norfolk freight market.

THE WITNESS: We have several times quoted on business from Norfolk, and on more than one occasion 3156
have sent a steamer to Norfolk for a sufficient quantity of cargo, and we are willing to do so at any time that conditions will warrant it. There are disadvantages, mainly in the cost. It means the loss of time of several days on the voyage, and the port expenses, and the cost of upkeep of the steamer for that time, local expenses and so forth, which necessarily entail a higher freight rate or some compensation for doing so.

3157 Q. Mr. Montgomery asked about outports increasing in China, with the general increase of business?

MR. MONTGOMERY: Asked this witness?
MR. MACLAY: No.

Q. Is it not true that if the business of an outport increased so as to pay a steamer to call there, it would cease by that very fact to be an outport? A. As soon as it was possible for a steamer to call regularly at one port, or for all steamers on that run to call regularly at a port, it would no longer be an outport. Moji, is the best example of that.
3158 Moji, a few years ago, was not considered a port of call, but it is practically so now, and the same rates apply as to ports of call.

CROSS EXAMINATION by Mr. Montgomery:

Q. Mr. Blake, have you ever solicited shipments from Norfolk, generally? A. Generally? No.

Q. Have you ever made any investigation to ascertain what freight could be moved from Norfolk? A. We have. There are comparatively few products which could move
3159 with advantage from Norfolk. The only ones that I recollect at the moment, or at any rate the principal ones, are tobacco and cotton domestics.

Q. And those could be moved more profitably than from New York? A. Well, from a number of points of origin it would probably be cheaper to ship them to Norfolk than to New York, if that is what you mean.

Q. That is what I mean. A. They don't move in sufficiently large quantities, and if they did at any time we would make a call for them.

Q. That is to say, if a large quantity of cargo could be
3160 accumulated by one shipper? A. Yes.

Q. You would go in there and take it? A. Yes; not necessarily one shipper.

Q. But you don't make any effort to get cargoes accumulated there, for the purpose of dropping in and picking it up, do you? A. Well, I don't know that I just understand what you mean; do we make any special effort?

Q. You don't make any effort to get shippers to accumulate cargoes at Norfolk, you don't solicit the business? A. Not in general, no, any more than they do from New Orleans or Mobile.

Q. Do you solicit the business from New York? A. Yes. 3161

Q. Do you ever go to New Orleans and solicit shipments from there? A. Not at present.

Q. Do you know whether there are articles that move from points of origin where the freight rates would be lower to New Orleans than to New York? A. Why, I have no doubt there are many. The same applies to every seaport in the country.

Q. And you never have investigated the matter sufficiently to find whether the business from these ports could be developed profitably, have you? A. It would be out of the question for us to route our steamers via New Orleans. 3162

Q. Well, how about a separate service from New Orleans; do you know whether that would be justified? A. Why, it is the intention of—

MR. MONTGOMERY: I move to strike out what the intention may be.

Q. (Question read.) A. There is a service from Gulf ports, which has been operated for a number of years past.

Q. By the Conference Lines? A. By some of the Conference Lines. The cargo there is confined almost entirely to 3163 phosphate and cotton; very little, if any, general cargo moving.

Q. That is to say, practically a tramp service, made up of a cargo of phosphate rock and cotton? A. It might be called so.

Q. And those boats don't go on the berth? A. Yes, they have for some time past.

Q. For how long past? A. Well, they would have at any time had cargo been available.

MR. MONTGOMERY: I ask that that be stricken out, 3164 what they would have done.

Q. How long past? A. I don't know that I know just what you mean by have they gone on the berth.

Q. Have they offered themselves on the berth for general cargo; and if so, at what ports, and when? A. Yes, I believe that they have; we have not operated steamers there ourselves.

Q. But you don't know of your own knowledge of any steamer having been offered for general cargo on the berth, at any port other than New York? A. I do.

3165 Q. Where? A. At New Orleans.

Q. When? A. Within the past year, several; how long that has been going on, I don't know.

Q. And by what lines? A. The Bucknall lines for one, and by the line operated by Puggini & Company and Barber & Company.

Q. Does the business obtained by those lines from New Orleans, or by any of them, contribute to the pool, or is that outside of the pool? A. That is outside.

Q. Has this pool agreement been terminated or modified to permit that? A. No.

3166 Q. Do you construe the pooling agreement to permit that?

MR. MACLAY: I object to these questions about the construction of a written instrument.

THE WITNESS: The pooling agreement covers Atlantic coast ports, only.

ence, with your conferees? A. It has been discussed in con-

Q. And then that is not construed as applying to Gulf of Mexico ports? A. It has not been so.

Q. Has that question ever been discussed in your pres-

3167 nection with the opening of the Panama Canal.

Q. And has a construction been agreed upon by all the conferees? A. No.

Q. So that it is a debatable question, as to whether this agreement applies to the Gulf of Mexico ports or not? A. Well, it is a matter of agreement, whether it shall or not.

Q. Haven't there been times when the Conference, as such, has carried cargo by chartered steamer, phosphate rock and cotton, from the Gulf ports? A. Conference, as such?

Q. Yes. A. Not to the best of my recollection.

Q. Well, haven't there been times when these chartered

3168 steamers carrying phosphate rock and cotton, have pooled their earnings with the Conference? A. I think not.

Q. Where do your steamers take on their coal? A. In New York.

Q. Don't they sometimes stop at Norfolk for coal? A. No.

Q. Haven't they ever? A. No regular boat has.

Q. Well, can coal be purchased cheaper in New York than at Norfolk? A. I don't think so.

Q. It would be cheaper to buy it at Norfolk, wouldn't it? A. It may be a little, not much.

Q. It is your understanding it would be a little, isn't it? 3169
A. I don't know that I can say; I am not familiar with the price of coal in Norfolk.

Q. So that you have never investigated that feature of the cost of operation from Norfolk? A. We have investigated the cost; we have ascertained the cost of coal there and at other ports, but any difference in coal has never been sufficient to warrant the extra time and delay and expense of going there.

Q. Well now, Mr. Blake, generally speaking, isn't it regarded by the agents at New York as to the best interests of the agent to have the business concentrated in New 3170
York, for the convenience of the pooling matters and conference and so on? A. It has nothing to do with the pooling and conference matters; it is a question of economics, only.

Q. Isn't the concentration of the business all at one port regarded as desirable from a pooling point of view? A. No.

Q. You have one pool measurer here, haven't you? A. Pool measurer?

Q. Yes. A. Yes.

Q. And what are his duties? A. He merely certifies to the capacity of the steamer, and the quantities of empty 3171
space, if any.

Q. And if you served other ports in the United States, you would have to have more than one pool measurer, wouldn't you? A. Yes, but it is a very infinitesimal matter.

Q. Then you have a conference weekly of all of the agents of the lines, of all the lines in the traffic, haven't you? A. Yes.

Q. And that, of course, could not be done if one service was from New York and another from Norfolk and another from New Orleans? A. You mean a separate and distinct service from each of these ports? 3172

Q. Yes. A. Or have a single steamer load at two or more?

Q. I mean a separate and distinct service from one or more of those ports? A. There is not enough business done from this country to warrant more than one service.

Q. Do you mean to say that there is not enough business that could be obtained from New Orleans to warrant a service from New Orleans to the Far East? A. When the Canal opens we hope there will be.

Q. Well, is there not now? A. No.

3173 Q. Have you ever investigated that? A. Of course, a service is a variable quantity; you may have a service of two steamers a year, or two a month.

Q. Well, that would be better than none, wouldn't it? A. Well, there is such a service now.

Q. That is the one you have been telling about, that has been carrying phosphate rock? A. They load at New Orleans; they will carry any cargo they can get from New Orleans.

Q. And do they advertise their sailings? A. They do.

3174 Q. Where? A. Norton & Son have opened their own office there.

Q. Well, that is very recently, isn't it? A. Last year, last December I guess.

Q. And they are not in the outward pool anyway, are they? A. No.

Q. So that they are not precluded by that? A. No.

Q. What is the other service? You say there is another line that has entered that service, from New Orleans, or do Norton & Son have the only one? A. No, there is a service operated by Funch, Edye and Barber & Company, as agents.

3175 Q. As joint agents? A. I think the steamers for which they are agents load alternately, or as nearly as possible so; I am not familiar with the exact arrangement.

Q. Then they have an office in New Orleans, have they? A. I think they have not their own office; they have agents there.

Q. They have a sub-agent at New Orleans? A. Yes.

Q. And was that started since the Norton line started? A. It is really a continuation of the same service which they used to run periodically from Gulf ports, with principally phosphate and cotton; it is practically the same service,

3176 extended somewhat.

Q. And the extension took place when? A. I don't really know; comparatively recently.

Q. Do you know when Norton & Son went in there and established an office? A. I don't know, exactly.

Q. Do you know when their first steamer went? A. No, I do not; last year, some time, I think.

Q. It was since then, was it, that Funch, Edye and Barber went in? A. As I say, it was really a continuation of the same line they have been running for years there.

Q. It was since then they went in and offered generally, for general cargo, and advertised, wasn't it? A. I think it was since then that they have generally advertised for it. 3177

Q. Have Norton & Son gone into the trade very aggressively or not? A. Quite so; all interests there are endeavoring to work up as big a trade as possible from the Gulf.

Q. And what kind of cargo are they getting? A. I really don't know; very little general cargo, I guess.

Q. And where does it originate, what they do get, do you know? A. I don't know that.

Q. You don't know how near full their boats have been? A. I do not. 3178

Q. You have no record of that? A. No.

Q. But it is a permanent service that they have inaugurated, expected to be permanent? A. I believe that is the intention.

Q. And it has not yet been determined whether the Conference will permit that to be done outside of the pool, is that true? A. I don't know that that particular question has been raised.

Q. I understood you to say there has been some discussion about whether they had a right to— A. (Interrupting) There is a question as to whether the existing Conference Lines, together with the American Manchurian Line, shall take over the Gulf service as a part of or an addition to our present service. 3179

Q. Well, in cases you don't? A. The question has come up only because of the Panama Canal, which makes the service from there possible.

Q. I don't know whether I asked you whether those lines, or either of them, are pooling? A. They are not.

Q. They are not pooling? A. No.

Q. How do their rates compare with the rates from here? A. I really don't know; I have not seen their tariff. 3180

Q. Have they a tariff? A. I presume they have.

Defendants rest.

With the exception of any re-direct examination which may be necessary after the cross examination of the defendants' witness Herbert Barber.

3181 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA,
Petitioner,

vs.

AMERICAN-ASIATIC STEAMSHIP COMPANY, and others,
Defendants.

In Equity.

3182

New York, July 22, 1914.

Met Pursuant to Agreement.

Present—GILBERT H. MONTAGUE,
Special Examiner.

APPEARANCES:

STANLEY D. MONTGOMERY, for the Petitioner.

BURLINGHAM, MONTGOMERY & BEECHER, Solicitors for defendants Howard Houlder & Partners, Ltd., and others.

3183

CHARLES BURLINGHAM, of Counsel.

SIMPSON, THACHER & BARTLETT, Solicitors for defendants Barber & Co., Inc., and others.

J. PARKER KIRLIN, of Counsel.

CONVERS & KIRLIN, Solicitors for defendants Bucknall Steamship Lines, Ltd., and others.

J. PARKER KIRLIN, of Counsel.

ROBERT H. BLAKE resumed the stand.

3184 CROSS EXAMINATION Continued by Mr. Montgomery:

Q. Mr. Blake, who is Whitjoint in this conference in London? A. Whitjoint, I believe, is a telegraphic address.

Q. Of whom? A. I think of the Houlders; Howard Houlder & Partners.

Q. When they are acting as a mouthpiece in London, I presume that Houlder, Weir & Boyd here would be acting as a mouthpiece here? A. Yes, sir.

Q. So that you would not know anything about cables sent to Whitjoint? A. Not necessarily.

Q. Do you recall this cable sent on October 10th, 1905, to 3185
Whitjoint: "At a joint meeting with overland roads today a working basis has been agreed upon. Full particulars will be communicated by first mail"? A. I don't remember it.

Q. The particulars were not communicated by you to the other side then? A. No.

Q. Do you recall an agreement with the overland roads at about that time, in 1905? A. We had some sort of an understanding with some of them for a while; I do not recollect the details of it.

Q. It was reduced to writing, was it not? A. Not that I 3186
know of; I never saw any written agreement.

Q. A memorandum of it was made, was it not? A. There may have been, but I really do not know.

Q. I call your attention, Mr. Blake, to the following extract from the minutes of the New York Conference entitled "Minutes of a Meeting of the General Conference Committee of the Suez and Pacific Steamship Lines held at 10-12 Broadway, at 11 A. M., March 5th, 1906:

"'*Arbitraries to Points beyond Ports of Call:* In view of the attitude of the Suez Lines on the above sub- 3187
ject as disclosed in the minutes of the meeting of January 31st, the Pacific Ocean Steamship Lines move:

"'1st. That effective at once the scale of minimum rates arranged between the Pacific Ocean Steamship Lines and the Suez Steamship Lines will apply only to the following ports: Yokohama, Kobe, Nagasaki, Moji, Shanghai, Hong Kong and Manila.

"'2nd. That arbitraries beyond such ports to all other ports in the Far East shall be mutually arranged as soon as possible and uniformly exacted by both the Suez and Pacific Ocean Lines on all shipments offering 3188
unless a deviation therefrom is authorized by the Rate Committee.

"'This was agreed to unanimously.'"

Do you recall that minute? A. I do not, Mr. Montgomery; I did not attend all the meetings I say at that time; I used to go occasionally; it is quite possible that I was not there.

Q. Do you recall the arrangement being made at that time in regard to arbitraries beyond ports of call with the

3189 Pacific Lines? A. I remember no particular arrangement as to arbitraries. I only remember in a general way that we had some understanding with some of the railroad lines; the details of it I have no recollection of at all, and it lasted only a short time as I remember it; so far as I know there was no written agreement.

Q. Could you tell how long that arrangement continued in effect? A. My recollection is that it was about a year more or less; it might have been less; I would not be sure of it.

3190 Q. Do you know whether or not in making your rates now to points that are not ports of call, you are restrained by any understanding with the Pacific Lines? A. We have no understanding whatever with the Pacific Lines.

Q. You are sure about that? A. I am positive.

Q. In either direction? A. In neither direction.

Q. How long since you have had any? A. Not since the time you mentioned; I guess that is about right; in 1905 or 1906.

Q. Then, at that time, March 5, 1906, you think it continued for about a year? A. Yes; I think it was discontinued prior to 1907, if I am not mistaken; I could not be

3191 certain of the date.

Q. Do you recollect whether arbitraries were arranged under this clause that "arbitraries beyond such ports to all other ports in the Far East shall be mutually arranged as soon as possible and uniformly exacted"? Do you recollect whether such arbitraries were arranged pursuant to that clause? A. I have no recollection of it; our idea has always been—

Q. Never mind about what your idea has always been, Mr. Blake; I want to know about this agreement and what

3192 was done under it? A. That is the principle we have always gone on with regard to arbitraries.

Q. I call your attention to this cable: "March 31, 1906; Shewan Tomes & Co., London, Eng."— That cable would be sent by the American-Asiatic Steamship Company, would it not? A. Sent to Shewan Tomes & Company of London?

Q. Yes, sent to them. A. I should think so.

Q. The cable reads:

"Agreement signed by R. P. Schwerin, Esq., after receiving wired confirmation all other Pacific interests

except Canadian Pacific who will reply Monday. Suez 3193
tea 37/6 matting 25 sh. 10% less Pacific tea 1½c. matting 1¼c. ¼c. more each of them less than carloads rates to be announced in all ports not later than April 5th to take effect on and after tea April 10th matting June 1st for a year each of them no."

The last word is "no," in this cable; it may not be complete. Do you recall sending that cable? A. I do not.

Q. Do you recall a discussion about an agreement signed by R. P. Schwerin? A. I do not.

Q. Where would such an agreement be if an agreement 3194
as indicated by that cable was signed by R. P. Schwerin; who would have the custody of it in the natural course of things? A. I presume Mr. Schwerin might have one; who else might have one I do not know.

Q. Would not the mouthpiece at that time have a copy or the original?

MR. KIRLIN: This is 1906.

A. Possibly, not necessarily; probably all the parties interested would have copies of it.

Q. Have you made any search for such a copy or such a 3195
cable? A. For such a cable?

Q. For such an agreement or a copy of it in your files? A. Yes.

Q. And your files fail to disclose it? A. Yes; I know there is none there.

Q. Do you recall whether there was such an agreement made on the tea rates and the matting rates? A. My impression is,—I may be wrong,—that some form of agreement was drawn up but was not signed; I may be wrong in regard to that.

Q. Your company, the American-Asiatic Steamship Com- 3196
pany, would not send this cable saying "Agreement signed by R. P. Schwerin" unless it had actually been signed, would it? A. If all the details had been agreed upon they might do so.

Q. Whether or not it was signed, it was acted upon, was it not? A. I presume so.

Q. And do you know for how long? A. I do not know for how long.

3197 Q. Can you tell whether it is in effect today? A. It is not; was the term of that agreement for one year?

Q. The cable does not so state; that is substantially all the information I have about it? A. I am not sure that it was renewed.

MR. KIRLIN: Was it for a short period?

THE WITNESS: Yes, it was only in effect for a short time; it did not amount to very much.

Q. I call your attention to a cable dated November 1st, 1906, to Whitjoint, London:

3198

"Referring to your telegram of the 31st are offered 12000 bales cotton from Galveston, Texas, U. S. to three ports in Japan 60c. Pacific Lines do not think we are entitled to load at Galveston according to agreement they decline to give permission we hold we are entitled to load at Galveston or elsewhere at the rate of New York tariff plus arbitrary to New York we consider it advisable to avoid all dispute if possible Pacific Lines for the present Tweedie will probably be able to obtain business."

3199 Do you recall that cable being sent? A. No.

Q. Do you recall the circumstance of an offer of 12,000 bales of cotton from Galveston at about that time? A. I do not recall the particular incident at all.

Q. Do you recall the question coming up about that time as to whether your line was precluded by some agreement with the Pacific Lines from taking cotton from the Gulf to the Far East? A. I do not recall the question arising.

Q. I call your attention to the reply, cable dated November 2nd, 1906, from Whitjoint, London; all these cables
3200 I am calling your attention to, of course, are the cables produced by some of the defendants contained in these books:

"Will abide by decision New York Committee we think it is absolutely necessary that you inform Pacific lines must have a right to Gulf loading in case of necessity."

Do you recall that cablegram? A. I do not recall it, no.

Q. Does not that refresh your recollection as to the question having arisen? A. I am afraid it does not, Mr. Mont-

gomery; I do not remember the question arising at all. 3201

Q. 12,000 bales of cotton is quite a little bundle, is it not? A. Yes.

Q. You always want to increase your business, do you not? A. Yes.

Q. Are you sure that you cannot recall an incident of that importance coming up and the question of whether it was within the scope of your business to take that cargo? A. I do not think it was considered as a very serious matter; I cannot remember every inquiry for 12,000 bales of cotton in the last eight years.

Q. I have no doubt that inquiries for space and cargo 3202 might escape your recollection; but it seems strange that you do not recall a question that goes to the limitations upon the territory in which you can operate?

MR. KIRLIN: You mean it seems strange to you?
MR. MONTGOMERY: Yes.

Q. I call your attention to this minute of the meeting of the Conference Lines of January 8, 1907, containing the following paragraph:

"Cotton from the Gulf: The American-Asiatic 3203 Steamship Co."—

That is your company, is it not? A. Yes.

Q. "The American-Asiatic Steamship Co. were requested to write to London and ask whether the principals on that side are willing that the agents here should push the question of our right to go to the Gulf to the point of breaking our relations with the Trans-pacific interests; and to add that, in the opinion of the agents, it is of vital importance that this right should be recognized; and moreover that as the Suez-Pacific agreement is of more value to the latter interests than the former, no apparent harm can come of 3204 pushing the point to the limit. It is desired that a cable reply be sent from London on receipt of this letter."

Does that refresh your recollection as to this controversy? A. The minutes that you have read make it quite clear as to what was taking place; I have no detailed recollection of it myself.

Q. Who in your company would have written this letter? A. On what date?

3205 Q. That your company was requested to write; the minute was on January 8, 1907? A. Probably Mr. T. A. Sparks.

Q. At all events a copy of that letter would have been preserved, would it not? A. I presume we have a copy somewhere.

Q. And it would be in your files, would it not? A. Yes.

Q. Did you search for that letter when we were endeavoring to get these documents last winter? A. I do not remember the particular search for this letter, no.

Q. Can you produce that letter? A. I don't know; I will be very glad to try.

3206 Q. Do you still say that you have no recollection of this question of your right to take cargo from the Gulf having arisen with the Pacific lines? A. No, I do not remember the question having arisen.

Q. You were attending the conference meetings at this time, were you not, in January of 1907? A. Some of them.

Q. Do you know whether or not your steamers did go to the Gulf to take that cotton? A. No, I do not; a number of steamers have loaded with cotton from the Gulf; I do not remember the particular inquiry to which you refer.

3207 Q. A large amount of cotton from the Gulf was moved by the Pacific lines at that time, was it not? A. Yes.

Q. And that may have been very largely due to this agreement, may it not? A. The fact that it was moving by the Pacific lines?

Q. Yes. A. No, I do not think so; a large proportion of it moves by the Pacific lines.

Q. May that not be because there was an agreement in the beginning that caused the cargo to start moving that way and that that channel having been developed, it continues to move in that way? A. Why, it worked the other

3208 way about; that was the original routing by the overland lines; it was not a new channel being developed; it was the original routing.

Q. That channel was at any rate preserved for a long time apparently by this agreement, was it not? A. No, I do not think this agreement had anything to do with that.

By Mr. Kirlin.

Q. How far back are your files kept? A. For about five years; we keep our letter books in the office back of that;

they are put away in a storeroom which we have in another building, and they are not very carefully preserved because of the fact we never have to refer to them. 3209

By Mr. Montgomery.

Q. Do you know whether these things we have been asking about, this agreement with Schwerin and these other agreements and letters, have been searched for in that storeroom? A. Yes, they have been searched for in every place where they might possibly be.

Q. And under your direction? A. Yes, under my direction. 3110

Q. To go back to this agreement indicated by these cables, I call your attention to this language in the cable of November 1st, 1906, to Whitjoint:

> "We hold we are entitled to load at Galveston or elsewhere at the rate of New York tariff plus arbitrary to New York."

What does that mean? A. I would take it to mean the New York rate plus the cost of shipping the cotton from the port in question to New York.

Q. What does the language, "we are entitled to load," mean? That means you are entitled under this agreement with the Pacific lines to load at that rate; is that right? A. I would take it to be so. 3211

Q. As a matter of fact is that the rate that the conference quoted the shippers at Galveston, the New York rate on cotton plus the cost of bringing the cotton from Galveston to New York? A. I don't know what they quoted at that time; the New York rate of course varies and fluctuates considerably.

Q. Yes, and I presume that the rate from Galveston here might fluctuate some; but the sum total of those rates are the rates quoted to Galveston shippers; is that correct? A. I should take it so from that. 3212

Q. Is the conference arriving at its rate on cotton from Galveston in the same manner today? A. No.

Q. How does the rate on cotton from Galveston now compare with the rate from New York? A. In the last specific instance that came to my attention, the rate was, I think, a little lower than from New York, or just as low.

3213 Q. Then this charge was based entirely upon this agreement with the Pacific lines and not upon the cost of carriage at all, was it? A. Presumably it was based on the market at the time, and competition.

Q. You could hardly say on the market if you were urging that you had a right to load at that rate; you do not contend that the Pacific lines could say that you had no right to load from Galveston at the New York rate? A. I am only judging from what you have read, Mr. Montgomery.

Q. Would you say, Mr. Blake, that there was any practical reason why it would cost more to carry cotton from
3214 Galveston than from New York? A. Yes, it might cost more.

Q. Does it? A. It depends largely on circumstances; if the steamer is in New York and must go to Galveston to load the cotton, it would cost considerably more.

Q. It would depend on the quantity, would it not? A. Whatever the quantity, the ship would have to make the trip from here to Galveston.

Q. But could it not go to Galveston and pick up 12,000 bales of cotton for less than the arbitrary from Galveston to New York? A. That would depend largely on the
3215 quantity.

Q. I say, for 12,000 bales? A. I should think so generally, yes.

Q. So that you were not able to even quote the rate on cotton that you would have liked to quote in that instance, were you, if you quoted the rate from New York plus the arbitrary from Galveston; do you understand the question? A. I presume what you mean is did we artificially raise our rate because of this agreement? As I said, I have no recollection of it.

3216 Q. Even if you had the right that you contended for, that is to load at the New York rate plus the arbitrary, did not the agreement preclude you from quoting a rate at which you would have been glad to get the business? A. I cannot say.

MR. KIRLIN: You mean, did it not preclude him from quoting a rate less than the New York rate plus the arbitrary?

MR. MONTGOMERY: No, the language is that; but did it not preclude him from quoting a rate he would

have been glad to quote in the absence of the agreement? Is that clear? 3217

THE WITNESS: Yes, it is clear; without knowing the terms of the agreement or the particular circumstances or the rates in effect at that time, it would be pretty difficult to answer.

Q. But you say now that that agreement has ceased, you quote a little less from Galveston to New York? A. We do not quote from Galveston.

Q. Who does? A. There are steamers running from Gulf ports occasionally now. 3218

Q. Whose are those? A. Well, the American-Manchurian Line have some, and Messrs. Barber & Company have some; Funch, Edye & Company have one occasionally, I believe.

Q. And they quote what price? A. I do not know what they quote.

Q. I understood you to say they quote a little less than the New York rate; is that right? A. I say that the only specific shipment that came to my attention recently showed the rate was about the same, if anything a little lower as I remember.

Q. Is that business of Barber & Company and of the American-Manchurian Line conference business? A. No. 3219

Q. It is not? A. No.

MR. MONTGOMERY: If you are able to locate those documents that I have asked for, if you will give them to Mr. Burlingham they can be put in the record without your being recalled.

By Mr. Kirlin.

Q. Do I understand you to say that you have no recollection of the terms of this arrangement, whatever it was, however definite it may have been with the Pacific lines? A. None at all. 3220

Q. And you are therefore unable to say whether you were limited in the quotation of rates on cotton from the Gulf or not? A. I have no recollection of our doing so at all.

Q. In the answers that you have made to these argumentative questions of Mr. Montgomery, you have not intended to intimate that there was anything in that Pacific agreement that prevented you from quoting a rate lower than the New

3221 York rate plus the arbitrary from Galveston to New York? A. I have not intended to.

Q. You have not intended by anything you have said to intimate that that specific arrangement prevented you from quoting, if you wished to do so, a rate lower than the New York rate plus the arbitrary? A. No.

By Mr. Montgomery.

Q. You have confidence in the intelligence of these people that compose the conference, have you not? A. Yes.

Q. You do not think they would have sent the cablegrams
3222 that I have read here if the agreement did not contain what I have intimated that it contained, do you?

MR. KIRLIN: I object to that because none of the cables contains any such prohibition on the lines.

MR. MONTGOMERY: On the contrary, Mr. Kirlin, the cable that I have just quoted here clearly states that the strongest contention that the Suez lines makes is that "we hold we are entitled to load at Galveston or elsewhere at the rate of the New York tariff plus arbitrary to New York." That is all we
3223 claim.

MR. KIRLIN: Probably that was the rate that they were asking; but it does not say that they could not get a less rate if they had wished to do so; that is argument on your part.

Q. Mr. Blake, you say these papers are filed away when they are five years old? A. The letter books.

Q. Then some of these papers, these particular papers of November, 1906, must have been put away since this suit was begun, were they not? A. When did it begin?

Q. In March, of 1911.

3224

MR. KIRLIN: That is a matter of arithmetic.

A. The files of 1906 were probably taken out of the office in 1911; we try to keep it pretty regular.

Q. So that there was not any effort made to preserve those files in case they might be needed in this suit? A. As soon as we had a notion of any particular documents you have wanted, we have taken care not to do anything with them.

HERBERT BARBER, recalled. 3225

CROSS EXAMINATION by Mr. Montgomery:

Q. I see at page 921 of the stenographer's minutes that you testified that during the years before the conference the rates were sometimes as low as four dollars and sometimes as high as $6.50 and $7 for direct shipment, and that shipment via Europe was $9 or $10 a ton; does that represent in your judgment about the ratio between the cost of carriage direct and by trans-shipment via Europe? A. In a general way.

Q. I notice you make this answer to a question of Mr. 3226
Kirlin on page 928 of the stenographer's minutes: "The tariff is made here in New York, is it? A. Made in New York, by the agents." The principals are mainly on the other side, are they not? A. The majority of them are on the other side.

Q. The great majority in interest? A. No, not the great majority; both the American Asiatic and ourselves are principals.

Q. But Shewan Tomes's main office is in London, is it not? A. The American Asiatic is an American corporation.

Q. I understand; but Shewan Tomes practically controls 3227
the American Asiatic, do they not? A. They are in China; they are a China firm.

Q. They have a house in London? A. Mr. Blake can tell you all about that; he knows more about it than I do. I understand that Mr. Adams in London is the agent for Shewan Tomes.

Q. The rates are made more by the agent than by the principals, are they not? A. Yes.

Q. If they are made here in New York? A. Yes.

Q. And it would naturally result that the majority of 3228
those participating in the making of the rates would not have first hand information as to the cost of doing the business, would it not? A. I don't know; Funch, Edye & Company and Howard Houlder & Company and Norton are agents, and they would not have first hand information about the cost of running the business.

Q. So that it would be other considerations that they would have to use in recommending rates, would it not? A. They would take the whole situation; the market and the competition into account before they would make rates.

3229 Q. But they would have to make their recommendations without much information in regard to the cost of the carriage, would they not? A. They would not have the first hand knowledge of that.

Q. And you of course would have not except as to your own line? A. Our own ships.

Q. You stated that these changes are made about every week; on page 928 of the stenographer's minutes you say: "There is hardly a week but what some item or other comes up that wants changing, to meet some competition via the Pacific or via Europe, or the state of the market
3230 does not enable a man to get his orders through at the rate we are quoting." As a matter of fact, when changes of that kind are suggested, is it not claimed to you that the rates from Europe to the Far Eastern ports are in the particular instance lower than your rates and that it makes competition with the European merchant difficult? A. Not always that.

Q. That is often the case, is it not? A. It is just as often the case that the man can buy his stuff cheaper in Europe.

Q. What I have in mind, Mr. Barber, was whether it does not happen that the rates from Europe are lower and that the American shipper complains to you of that fact; has not
3231 that happened? A. It has happened, but they do not know the rates from Europe, and neither do we.

Q. What you have said about the parity of rates from Europe, or what has been said in this case, was not based upon very full information, was it? A. It is based on the best information we can get.

Q. That is not very good, is it? A. I will tell you why not if you will allow me to explain.

Q. Yes, I would be very glad to have you tell us? A. That there are sometimes intense freight wars going on in
3232 Europe between steamers, and rates are changed very much from week to week; and where a man in one week can get stuff shipped at $5 a ton, the following week he may not be able to ship for $10 a ton.

Q. So that in order to maintain a parity with Europe, you would have to maintain the parity of Europe, would you not? A. We frequently do.

Q. I mean to say, you could not control a parity of rates between the United States and Europe unless you controlled the European rates themselves, could you? A. There is no control of European rates.

Q. I say, you could not do it without that? A. The European rates fluctuate, and so do the rates here fluctuate. 3233

Q. And there is not much of any parity of rates? A. We try to keep as near the parity as we can.

Q. But you cannot tell much about it? A. We cannot tell very much about it; we get the best information we can, but that is often inaccurate.

Q. You would not say, would you, that it does not frequently happen that merchants or manufacturers in Europe get opportunities to ship very much cheaper than their competitors here at times? A. On the other hand the people here often get opportunities to ship much cheaper than they can from Europe. 3234

Q. What parity there is between European rates to the Far East and your rates to the Far East, is the parity with the European conference, is it not; European competition is reduced, I mean? A. We always try to keep a parity of competitive rates on competitive articles.

Q. Those are almost impossible of ascertainment, are they not, the rates outside of the conference? A. What is the question?

Q. The rates outside of the conference rates, the Europe rates made by lines outside of the Conference are almost impossible of ascertainment, are they not, by you? A. We find out in a general way what they are doing. 3235

Q. But that would be a very general way, would it not? A. Yes.

Q. There is considerable competition with the conference lines in Europe, is there? A. Sometimes, and sometimes there is none at all.

Q. In making these reductions does not that demoralize the market? A. No.

Q. The freight market, I mean? A. No. 3236

Q. You say that some of these reductions are due to competition? A. Yes.

Q. Of one kind and another? A. Yes; that is so.

Q. There has been some testimony here tending to show that competition demoralizes the rates, but you say it does not; do I understand you to say that these reductions of rates that you have made in response to competition, has not demoralized the market? A. What we say is that open competition without conference demoralizes rates.

3237 Q. But if there is a conference no matter what the competition with the conference may be, there is no demoralization of rates; is that it? A. There is some; occasionally there is some, but it tends to keep rates at a parity.

Q. That is mere tendency, is it not? A. I say it tends to make them more stable than they otherwise would be.

Q. You have testified that the rates have been reduced somewhat during the present year? A. They have been.

Q. How does that affect a man that has a forward contract based on the idea that the rates are going to be stable? A. He would likely have sold his merchandise based on the
3238 rate we quoted him, and it does not affect him at all. He has got his rate of freight and has made his sale of his stuff.

Q. But the purchaser who has bought on that basis would be affected, would he not? A. We do not worry about the purchaser in China and Japan; they take care of themselves. We take care of our own interests and our shippers.

Q. But the fact that this question would be apt to arise might deter the purchaser from buying, might it not? A. On the other hand—

3239 Q. Might it not? A. When rates go up the purchaser who has bought his stuff based on the rates quoted gets the advantage.

Q. Is it not a fact that merchants are deterred from making contracts ahead, or have been deterred from making contracts ahead, owing to changes in rates? A. Because freights are falling and they think they would be better off by waiting; they take their chances.

Q. So that this stability of rates enabling the merchants to make forward contracts is not of much avail at the present time, is it? A. It is; if a man has a chance to make a contract, he can have his rate of freight fixed for him.

3240 Q. But if the purchaser thinks that rates are going to fall, he will defer purchasing, will he not? A. No, because he may think the value of the stuff is going up and therefore he would rather buy, when he can get it at the price that will suit him.

Q. At any rate whatever advantage there may be in the stability of rates, that is not produced by the conference at a time like this? You would not say in other words that the rates are stable now or have been this year, would you?

A. They are generally; they are stable, but we meet the conditions; the tendency has been downward. I do not think there is an alteration in the last six months except downward, in our rates. 3241

Q. Whether downward or upward, they are not stable, are they? A. They are; when they are fixed they are fixed, and nobody else will get a higher rate.

Q. For how long? A. For that week.

Q. But the next week somebody may get a lower rate? A. Or they may get a higher rate.

Q. You would not call rates that are stable for a week stable rates? A. We make a stable rate for him to ship his cargo twelve months ahead if he likes. 3142

Q. What you mean by a stable rate is stable to the man who has a contract for shipping ahead? A. Yes; he can sell his produce for a year ahead.

Q. But you do not mean to say, Mr. Barber, that the rate is stable in the sense that the freight rate continues without fluctuation for a long period of time, do you? A. Ocean rates are never stable; they are just as unstable as the sea itself.

Q. You testified on page 936 that the trade to China has increased altogether five fold but not entirely by way of Suez; that it has increased by way of the Pacific, and also by trans-shipments via Europe; of course there are a great many articles that never have gone by the Pacific, are they not? A. I do not know of any; I suppose case oil does not go, nor coals, nor phosphate; they do not go by the way of the Pacific, rough articles such as that; all steel rails have gone by way of the Pacific. 3243

Q. Very rarely? A. They have at times; it was only last year they made a rate via the Pacific that cut into our rates here and we had to reduce on account of it.

Q. But generally speaking the articles that originate on the Atlantic coast unless they are very large in bulk as compared to their weight, go almost entirely via the Suez, do they not? A. Not at all; there is hardly anything you can mention but what goes via the Pacific; they are in competition with us all the time; they come to Schenectady and take all our machinery from us, right at our doors. 3244

Q. You would not say, would you, that the increase in the trade had been due to the conference? A. We have helped it.

3245 Q. Has not the trade helped the conference a good deal? A. No doubt; it was mutual.

Q. But the conference has rather responded to the need for facilities whatever made them, in advance, has it not? A. We have always had more tonnage than we could load, we have always had more steamers than we could load.

Q. You mean the trade has been overtonnaged? A. Yes; we had to put the steamers away for other business.

Q. I suppose that is because your interest wants its share in the business and that results in overtonnaging, does it not? A. No; the westbound business, that is the import
3246 business here, has been heavier and taken more tonnage than the eastbound; we have had more steamers to load on the berth than we could take care of, and we have to take cargoes of case oil or anything else to get them out East again.

Q. You can always do that by lowering your rate on case oil? A. Yes.

Q. Do you know what lines constitute the European conference? A. I could not tell you all of them; I know the principal lines, but I could not tell you all.

3247 Q. The Hamburg American Line is one, is it not? A. The Alfred Holt Line, that is the Holt Line from Liverpool and London; and the Mutual Shipping Company.

Q. Never mind enumerating them all, Mr. Barber; but the Hamburg American Line is one of them, is it not? A. Yes; they are part of the conference lines.

Q. Are there any other members of the European conference who are also members of this conference? A. No, except Gellatly Hankey & Company are members of the conference from England to the Far East.

Q. That is the European conference, is it not? A. Yes;
3248 that is part of the European conference, and Gellatly Hankey & Company supply steamers to Dodwell & Company for the westbound business of our conference.

Q. Then Gellatly Hankey & Company and the Hamburg American Company would have fully as much interest in the European shipper as they would in the American shipper, would they not? A. Yes, but Gellatly Hankey & Company have nothing to do with the conference from New York eastbound.

Q. But the Hamburg American Line has, has it not? A. Indirectly from what Messrs. Funch, Edye & Company have told you.

Q. At any rate the Hamburg American Line in the first 3249
place is a German corporation? A. Yes.

Q. And it participates in the European conference? A. I believe so.

Q. And its main interest would be in favor of the European shipper rather than in favor of the American shipper, would it not? A. Yes, but the Hamburg American Company has only a small share of the United States and China-Japan Line that Funch, Edye & Company load. The dominant force in that line is Royden of Liverpool, the Indra Line; the Hamburg Line simply supply a small portion of sailings to Royden's Line. 3250

Q. Whatever their interest is, their interest in the American shipper would be less than their interest in the European shipper, would it not? A. Yes, no doubt.

Q. And they would favor him at every opportunity, naturally, would they not? A. But they have no voice in the conference here.

Q. They have a voice in the making of the rates, have they not? A. No.

Q. Through Funch, Edye & Company? A. They have nothing to say in the slightest.

Q. You know that Funch, Edye & Company are agents for 3251
them in a number of trades, are they not? A. Yes, they are, and agents for the Roydens also.

Q. To what extent have trans-shipments via Europe increased? A. I could not tell you the percentage but it has evidently increased; we frequently send large blocks of cargo by way of Europe.

Q. What kind of cargo? A. Tobacco and domestics; bales of domestics, piece goods.

Q. Frequently? A. Frequently, yes.

Q. How many shipments do you know of having gone 3252
by Europe in the last five years of cotton piece goods? A. I could not tell you, but hundreds of them.

Q. What shippers have trans-shipped by Europe? A. I could not tell you.

Q. We have had a number of shippers on the stand here of cotton piece goods and one of them testified that he made two shipments, and two others testified that they had not made any shipments via Europe; how do you know that there has been a large number of shipments? A. We take

3253 a large number of domestics to Aden on our steamers; that is on our route, and it helps to fill our steamers, and I should think there is probably 50 or 60 per cent. of the exports to Aden that go by the way of Europe.

Q. Of exports to Aden? A. Yes, to Aden.

Q. But to the China and Japan ports— A. No domestics go to Japan; it is only China; Japan makes domestics and sends them away.

Q. To China ports there are no shipments of domestic? A. Not a great number.

Q. Very rare, are they not? A. Yes, mostly by way of
3254 the Pacific.

Q. And tobacco; that is very rarely shipped to China, is it not? A. Oh, not at all; we have had a very serious competition even going on now where they take hundreds of hogsheads of tobacco from us here and from Baltimore by way of Bremen and by way of other ports of Europe.

Q. That is where a boat sails from Baltimore? A. Yes.

Q. And that is where the tobacco originates, is it not? A. No, it originates in the west, not in Baltimore.

Q. How long has that condition been continuing? A. It has been so for years; and if you take the Journal of Com-
3255 merce from day to day and look at the exports you will always find something shipped every day via Europe to China and Japan.

Q. Can that be done at lower rates than yours? A. Sometimes it can.

Q. Where that is so, if it is possible to ship from America to Europe and then trans-ship cheaper than you can ship from here to the Far East, does it not follow that the rate from Europe to the Far East would necessarily be a great deal lower than yours? A. It does not follow, sir; the
3256 shipments that are made in competition with us are often taken by one line. For instance the North German Lloyd have their own steamers running from Baltimore to Bremen, and they will take the stuff for next to nothing across to Europe and trans-ship it.

Q. You testified on page 938 of the stenographer's minutes that about 40 per cent. of all the cargo that moves from this country to the Philippines, China and Japan is carried by the conference lines; is that right? A. Yes, sir.

Q. Then it must follow, must is not, that a very large

proportion of the quantity of cargo originating near the Atlantic coast goes by your lines? A. Yes. 3257

Q. Practically all of the cargo? A. Not all, not by any means; I tell you that every week we have cargo being shipped from nearby places via the Pacific.

Q. That would be as a rule cargo that stows up big, would it not? A. No; all mannner of cargoes; sometimes cargo is in a hurry.

Q. For some particular reason of that kind? A. Yes.

Q. Would not the total of that be a very small proportion of traffic? A. I think not; it would be a large proportion of traffic, a considerable proportion of the traffic. 3258

Q. Can you name any article that moves from the Atlantic coast in large quantities by other than the conference lines except tobacco? A. Automobiles.

Q. Where do they originate? A. Anywhere between here and Chicago.

Q. Those originate a great deal nearer Chicago than New York, do they not? A. No; Chicago is only 1,000 miles nearer New York than it is to San Francisco or Seattle.

Q. That is true, but the automobiles originate many of them near Detroit, do they not? A. Detroit is the great place for them, yes. 3259

Q. And you don't know of any automobiles originating any nearer New York than Detroit, that go by the Pacific, do you? A. I think they manufacture automobiles all through the country and ship them via the Pacific.

Q. That would be due to some extent to the desire to get them there promptly, would it not? A. No.

Q. It is valuable cargo, is it not, in which the interests would be united? A. No; the Pacific lines take very low rates on such articles as that. The railways give them very low rates; they take them for next to nothing. 3260

Q. In regard to pooling, you testified on page 940 of the stenographer's minutes that the agents where there is pooling will advise the shipper what line to ship by? A. Yes.

Q. In the absence of pooling and in competitive times would not the merchant himself have something to say about how his goods are shipped? A. He would have all to say, but he does not always know; he frequently does not know.

Q. The shipper generally would know something about the ships that he is using, would he not? A. He would

3261 know something about them, certainly; but there are new shippers turning up every week, and those are the people I had in mind about advising which is the best line to ship by.

Q. You said that pooling enabled the conference lines to serve outports? A. Yes.

Q. In rotation? A. Yes.

Q. Would it not be possible for the conference lines to rotate as to the outports without the pool? A. No.

Q. Why not? A. Because they always try to dodge the undesirable ports that do not give much traffic.

3262 Q. If you had an agreement as to sailing dates that would control that question, would it not? A. Agreements do not always control everything of that sort.

Q. If they were lived up to, they would, would they not; the pooling agreement would not unless it was lived up to, would it? A. The conference agreement might not cover the calling at outports.

Q. I understand, but I am assuming that it does cover; if the conference agreement did cover the outport proposition and provided for the dates of sailings, it would take care of that question, would it not? A. Not as fully as it would if

3263 the earnings were pooled.

Q. Why not? A. That is how it works out in practice, that if the earnings are not pooled the man finds some reason for not sending his boat to an undesirable port.

Q. Do you base that on your experience in some conferences where there was an arrangement in regard to sailings? A. I do.

Q. But no pool? A. I do.

Q. What conference was that? A. The China and Japan at the present time.

Q. From where? A. From New York.

3264 Q. You mean to say there is a pool with everybody except the Manchurian Line? A. Yes, and they are the people we cannot control; they dodge going to ports that do not suit them.

Q. As a matter of fact the Manchurian Line goes to a number of outports, does it not? A. When it suits them.

Q. They do frequently, do they not? A. Not as frequently as we have to.

Q. They call also at other ports in the United States than

New York, do they not? A. Not under the conference agreement. 3265

Q. Haven't they gone to Baltimore for rails frequently? A. Yes.

Q. And they are the only ones that do not pool and yet they are the ones that go to other ports than New York for cargo? A. We have gone to Baltimore for cargo also.

Q. When? A. Within the last four or five years; we go whenever it suits us.

Q. You have not done it as frequently as the Manchurian Line has, have you? A. I think we have.

Q. You testified on pages 942 and 943 of the stenographer's minutes that "when tramp steamers are cheap, our rates have to go down also." And then you were asked, "If they didn't the tramps would be on your backs at once, would they not?" And you answered, "They would." That was over my objection. How often, Mr. Barber, do you recall tramp steamers being loaded on the berth in New York for Far Eastern ports during the period from April 13, 1905, to date? A. I do not think any have. 3266

Q. So that tramp competition in that sense does not exist? A. It does; we have met the competition and lowered our rates so as to prevent them coming on the berth. For instance, to give you a concrete example, a large quantity of cement is offering for Manila, and shippers come and say that we can get this contract for a certain price and "we will pay you a certain rate." If we find a tramp steamer can be got at something near that rate, it quickens us to reduce our rates to carry the traffic; if tramp steamers are scarce and dear, then we can ignore them. 3267

Q. In other words what the tramp steamer induces you to do is to lower your rates for very large quantities which are practically full cargoes; is that right? A. That is right.

Q. It would not alter the question of what you would charge on cotton piece goods, for instance? A. No. 3268

Q. Nor your rates on automobiles or any general cargo of that kind? A. No, it would not.

3269 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA, Petitioner, vs. AMERICAN-ASIATIC STEAMSHIP COMPANY, *et al.*, Defendants.	Equity.

3270

I, Gilbert H. Montague, the Special Examiner appointed by the order of this court to take proofs of final hearing in the above-entitled case, respectfully report that I have been attended by counsel for the respective parties and by the witnesses produced in behalf of the petitioner and the defendants, and said witnesses having been duly cautioned and sworn to testify the truth, the whole truth and nothing but
3271 the truth, were examined and their testimony reduced to typewriting by George J. Chambers, the stenographer appointed by the court herein. That the foregoing is said testimony and all of the same.

I further certify that I am not of counsel for either of the parties to this cause nor in any way interested in the event.

Dated, New York, September 23, 1914.

GILBERT H. MONTAGUE.

3272 WALTER D. WILE,
Notary Public,
(Seal) New York County.

DODWELL, FOLIO 494.

AVERAGE RATES OF FREIGHT (AFTER DEDUCTING DEFERRED REBATES) EARNED BY NEW YORK WESTWARD CONFERENCE STEAMERS, TAKEN FROM THE OFFICIAL POOLING RETURNS.

Pool Number	Total No. of Strs.	Units	Net Freight (x) £	Freight per Unit of 40 c. ft. Bale Space	Number of Strs. x	D. W. Cargo Capacity Tons (Total)	Net Freight Earned by Number of Steamers given in Column 6	Net Freight per Ton D. W. of Cargo (Summer Freeboard)	Number of Strs. Paid into Pool.	Number of Strs. Recd. From Pool
One										
(1905) Two	34	313,300	291,800	18/7 1/2d	28 x	190,976	245,500	25/8d	16	+ 18 = 34
(1906) Three	47	433,600	450,300	20/9d	41 x	277,162	393,900	28/5d	24	+ 23 = 47
(1907) Four	47	427,000	460,600	21/7d	42 x	279,512	413,500	29/7d	25	+ 22 = 47
(1908) x Five	48	446,700	484,100	21/8d	48	326,100	484,100	29/8d	27	+ 21 = 48
(1909) † Six	57	540,000	588,100	21/9d	55 x	375,222	567,300	30/3d	29	+ 28 = 57
(1910) ‡ Seven	61	587,500	648,500	22/1d	61	420,629	648,500	30/10d	34	+ 27 = 61
(1911)	59	591,200	660,300	22/4d	56 x	386,349	619,400	32/1d	28	+ 31 = 59

x In Pool 5 there were Five Chartered steamers showing a profit
Two " " " loss

† In Pool 6 there were Five Chartered steamers showing a net profit of £2800.

‡ In Pool 7 there were 9 Charters (7 Profit/2 loss) showing net profit £2500.

x In these years a few steamers have been omitted and their earnings deducted as their D. W. Capacity is not recorded. The result is not appreciably altered.

Loss £209

(x) After deducting deferred rebates.

9276 9277 9274 9275

THIS PAGE BOUND VERTICAL IN BOOK

3277 DEFENDANTS' EXHIBIT 2.

SPARKS, FOLIO 1586.

THIS AGREEMENT, made and entered into this 18th day of July, 1908, by and between Clarence R. Edwards, Brigadier General, United States Army, Chief of the Bureau of Insular Affairs, for and on behalf of the Government of the Philippine Islands, to be known and hereinafter designated as the party of the first part, and the United States and China-Japan Steamship Line; The Barber Line, Barber
3278 and Company, Incorporated; The American-Asiatic Steamship Company; and the American and Oriental Line, to be known and hereinafter designated as parties of the second part, witnesseth:

The consideration for this agreement is the sum of one dollar (1) lawful money of the United States, by each of the parties hereto paid to the other, the receipt whereof is hereby acknowledged, and the other good considerations hereinafter set forth.

3279 1. The party of the first part agrees that all cargo which may be shipped by it from the port of New York, N. Y., to Manila, P. I., via Suez (excepting cargo shipped on any United States Government transport; or upon the steamships of The American and Manchurian Steamship Company, with which latter company the Government of the Philippine Islands has a contract of carriage identical with this) shall be routed through the agencies of the parties of the second part, subject to the provisions of section 9 hereinafter, and under further provisions hereinafter specified.

3280 2. The parties of the second part undertake the transportation of cargo tendered by the party of the first part for transportation from the said port of New York, N. Y., to Manila, P. I., during the period extending from July 1, 1908, to June 30, 1909, under the terms and conditions hereinafter specified, on the vessels of the United States and China-Japan Steamship Line, The Barber Line, The American-Asiatic Steamship Company, and the American and Oriental Line, or on other vessels of equivalent burden and equipment (except as stated in paragraph one above).

3. The parties of the second part further undertake that 3281
at least one vessel of the lines of the parties of the second part shall accept cargo of the party of the first part, if tendered, and shall sail in each month from New York for Manila, and shall consume in the passage between said ports of New York and Manila from fifty to sixty days.

4. The parties of the second part further undertake that, except as hereinafter provided, all cargo shipped by or on account of the Philippine Government via the steamships above designated, including ordnance stores, other than ammunition and explosives, and specie, other than silver 3282
and gold, during the period covered by this agreement, shall be transported to Manila, and there delivered ex-ship to the proper consignee, at the rate of six dollars ($6) United States currency per ton of forty cubic feet or 2240 pounds, or pro rata, for any fraction thereof, the mode of computation being at ship's option.

5. It is further agreed that for the transportation of heavy pieces, exceeding two tons in weight to the piece, the following additional charges shall be made and allowed: 3283

Over	2	and not over	4	tons,	$1.25	per ton,	wght.	or meas.
Over	4	and not over	6	"	3.75	" "	" "	"
Over	6	and not over	8	"	6.00	" "	" "	"
Over	8	and not over	10	"	10.00	" "	" "	"
Over	10	and not over	12	"	12.50	" "	" "	"
Over	12	and not over	15	"	16.00	" "	" "	"
Over	15	and not over	20	"	21.00	" "	" "	"

6. It is further agreed that the following special rates shall prevail: 3284

(a) On safety cartridges, $10.00 per 2,000 pounds.

(b) On dangerous cargo, requiring shipment on deck, $15.00 per ton, weight or measurement, the same to be carried at shipper's risk.

(c) On high explosives or powder, $40.00 per ton, weight or measurement. The parties of the second part reserve the right to charge freight on such high explosives or powder on the basis of a minimum quantity of ten tons, in all cases

3285 where explosives shipped by other parties are not carried on the same vessel. And the party of the first part reserves the right to delay shipment of its explosives until such explosives can be loaded with other like cargo or cargoes and thus secure to the party of the first part the rate of $40.00 per ton without regard to the quantity shipped.

7. It is further agreed that bills of lading in octuplicate, made out on regular form used by the steamship company carrying the cargo, shall be furnished by the parties of the second part to the party of the first part, free of all charges,
3286 as soon as possible after the goods are received, it being understood and agreed that the party of the first part shall permit all items of its cargo shipped on any one vessel to be embraced under one bill of lading wherever this is possible and compatible with its interests.

8. It is further agreed that the parties of the second part shall receive cargo, excepting deck cargo, explosives, and heavy lifts, at such times as the party of the first part shall tender such cargo for shipment, and shall warehouse and properly protect same in covered sheds until loaded on board,
3287 risk of fire and flood excepted, and that such receipt and warehousing of the cargo shall be free of all expense to the party of the first part.

9. It is further agreed that if, during the period covered by this agreement, rates as low as, or lower than, these herein stipulated shall be offered by any transportation company for the freighting of cargo to Manila in American bottoms, the party of the first part reserves the right to avail itself of such offer. It is also understood and agreed that nothing herein contained shall be construed in any wise to
3288 prejudice the right of the party of the first part to ship any or all of its merchandise via San Francisco or any other port on the Pacific coast.

10. It is further agreed that freight charges accruing to the parties of the second part under this agreement shall be paid by the Disbursing Agent of Philippine Revenues at Washington, D. C., on vouchers duly certified by the Pur-

chasing Agent of the Philippine Government in New York City, as soon after the presentation of such vouchers as may be consistent with the orderly and regular dispatch of business in the office of the said Disbursing Agent. 3289

11. It is further agreed that no member of or delegate to Congress, nor any person belonging to or employed in the military service of the United States, or in the Civil Service of the Government of the Philippine Islands, is or shall be admitted to any share or part of this contract, or to any benefit which may arise therefrom.

3290

In witness whereof the parties hereto have caused this instrument, and five (5) duplicates thereof, of identical tenor and effect, to be signed and executed by their, and each of their, proper officers or agents, thereto duly authorized, the day and year first herein above written.

WITNESS:

THE GOVERNMENT OF THE PHILIPPINE ISLANDS,
By B. C. R. Edwards, (L. S.)
Brigadier General, U. S. Army,
Chief, Bureau of Insular Affairs, 3291
War Department.

WITNESS:

UNITED STATES AND CHINA-JAPAN STEAMSHIP LINE,
By Funch Edye & Co., (L. S.)
As its agent.

Robt. H. Goodwin.

WITNESS:

THE BARBER LINE,
BARBER & COMPANY, INCORPORATED,
By J. Barber, (L. S.) 3292
As its V. P.

A. L. Houtman.

WITNESS:

AMERICAN-ASIATIC STEAMSHIP COMPANY,
By J. McMurtrie, (L. S.)
As its Secy.

N. H. Putnam.

3293 WITNESS:

AMERICAN AND ORIENTAL LINE,
By Howard Houlder & Partners, Inc.,
William Boyd, Prest. (L. S.)

As its agents.

A. L. Houtman.

NOTE: In case any of the above companies has a corporate seal lodged with its representative, the same shall be impressed; in case of no seal, one witness is required, and if
3294 any signatory holds a power of attorney, or commission of agency, a copy of the same, properly authenticated, should be returned to the Bureau with the first original.

DEFENDANTS' EXHIBIT 3.

SPARKS, FOLIO 1586.

SUPPLEMENTAL AGREEMENT, made and entered into this ..... day of ....., 1909, by
3295 and between Clarence R. Edwards, Brigadier General, United States Army, Chief of the Bureau of Insular Affairs, for and on behalf of the Government of the Philippine Islands, of the one part, and the United States and China-Japan Steamship Line; The Barber Line, Barber and Company, Incorporated; The American-Asiatic Steamship Company; and the American and Oriental Line, of the other part, *Witnesseth:*

That for and in consideration of the sum of One Dollar ($1.00) lawful money of the United States, by each of the
3296 parties hereto paid to the other, the receipt whereof is hereby acknowledged, and other good and valuable considerations, all the provisions of an agreement made and entered into by and between the parties hereto, dated 18th July, 1908, in relation to the carriage of freight between the Port of New York, and the Port of Manila in the Philippine Islands, are hereby extended to the first day of July, 1911.

In witness whereof the parties hereto have caused this instrument, and five (5) duplicates thereof, of identical tenor and effect to be signed and executed by their, and each

of their, proper officers or agents, thereto duly authorized, 3297
the day and year first herein above written.

WITNESS:
THE GOVERNMENT OF THE PHILIPPINE ISLANDS,
By C. R. Edwards, (L. S.)
Brigadier General, U. S. Army,
Chief, Bureau of Insular Affairs,
War Department.

A. T. Ruan.
WITNESS:
UNITED STATES AND CHINA-JAPAN STEAMSHIP LINE, 3298
By Funch, Edye & Co., (L. S.)
As its agents.

R. D. Bettman.
WITNESS:
THE BARBER LINE,
BARBER & COMPANY, INCORPORATED,
By Francis M. Wilson, (L. S.)
As its 2nd Vice Prest.

A. L. Hautman.
(Corporate Seal of Barber & Co.)
WITNESS: 3299
AMERICAN-ASIATIC STEAMSHIP COMPANY,
By J. McMurtrie, (L. S.)
As its Secy.

R. H. Blake.
WITNESS:
AMERICAN AND ORIENTAL LINE,
By Howard Houlder & Partners, Inc.,
As its agents.
William Body Pres. (L. S.)

R. A. Sewell. 3300

(Corporate seal of Howard Houlder & Partners, Inc.)

NOTE: In case any of the above companies has a corporate seal lodged with the representative, the same shall be impressed; in case of no seal, one witness is required and if any signatory holds a power of attorney or commission of agency, a copy of the same, properly authenticated, should be returned to the Bureau with the first original.

3301 DEFENDANTS' EXHIBIT 4.

Excerpt from Lloyd's Register read into record, folio 1804.

DEFENDANTS' EXHIBIT 5.

BARBER, FOLIO 2907.

#4

STEEL RATES

3302

	Singapore Manila	Hong Kong	Shanghai	Yokohama Kobe
Rails	17/6	17/6	17/6	17/6
Bar Iron	20/–	16/3	17/6	16/3
Flat Plates, I-beams, Channels, Angles, Zees, Tees & Piling	25	16/3	17/6	16/3
Hoops (straight)	2[illegible]	[illegible]6	27/6	27/6
Nails	[illegible]	[illegible]/3	17/6	16/3
Plain Wire	[illegible]	[illegible]/3	17/6	16/3
Barb Wire	[illegible]/6	27/6	27/6	27/6
3303 Pipe	27/6	27/6	27/6	27/6
Galvd. Sheets (in c/s or crts)	27/6	27/6	27/6	27/6
Galvd. Sheets (in bdls)	25/–	25/–	25/–	27/6
Tin Plate	27/6	27/6	27/6	27/6
Bridge Material or Structural Material, Eye Bars and other close stowing material under 30 ft. to the ton	27/6	27/6	27/6	27/6
3304 Lattice Work or Girders up to 8000 lbs.	30/–	30/–	30/–	30/–
up to 13000 "	32/6	32/6	32/6	32/6
up to 16000 "	35/–	35/–	35/–	35/–

May, 1914